

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

NEW YORK IMMIGRATION COALITION, ET AL.,

Plaintiffs,

vs. Case No. 1:18-CF-05025-JMF

UNITED STATES DEPARTMENT OF COMMERCE, ET AL.,
Defendants.

Washington, D.C.

Wednesday, August 29, 2018

Deposition of:

DR. JOHN ABOWD

called for oral examination by counsel for
Plaintiffs, pursuant to notice, at the office of
Arnold & Porter, 601 Massachusetts Avenue NW,
Washington, D.C., before KAREN LYNN JORGENSEN,
RPR, CSR, CCR of Capital Reporting Company,
beginning at 9:06 a.m., when were present on
behalf of the respective parties:

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VIDEOGRAPHER: Dan Reidy

P R O C E E D I N G S

WHEREUPON,

VIDEOGRAPHER: Good morning. We're going on the record at 9:06 a.m. on Wednesday August 29, 2018. Please note that the microphones are sensitive and may pick up whispering and private conversations. Please turn off all cell phones and place them away from the microphones, as they can interfere with the deposition audio. Audio and video recording will continue to take place unless all parties agree to go off the record.

This is Media Unit 1 of the video recorded deposition of Dr. John Abowd taken by counsel for the plaintiff in the matter of the New York Immigration Coalition, et al., v. United States Department of Commerce, et al. This case is filed in the U.S. District Court of the Southern District of New York. This deposition is being held at the law offices of Arnold & Porter located at 601 Massachusetts Avenue Northwest, Washington, D.C. 20001.

1 My name is Dan Reidy from the firm
2 Veritext Legal Solutions, and I'm the
3 videographer. The court reporter is
4 Karen Jorgenson from the firm Veritext Legal
5 Solutions.

6 I am not authorized to administer an
7 oath. I am not related to any party in this
8 action, nor am I financially interested in the
9 outcome.

10 Also, counsels' appearances will be noted
11 on the stenographic record rather than orally at
12 this time.

13 Will the court reporter please swear in
14 the witness?

15 DR. JOHN ABOWD,
16 called as a witness, and having been first duly
17 sworn, was examined and testified as follows:

18 THE WITNESS: I do.

19 EXAMINATION BY MR. HO:

20 Q Dr. Abowd, before we get started, I just
21 want to confirm something on the record with your
22 counsel.

1 MR. HO: And that is that after 6:00 p.m.
2 last night, plaintiffs' counsel received a 77-page
3 extended white paper analyzing, among other
4 things, the effect of adding a citizenship
5 question on data quality and response dates. That
6 white paper was dated August 6, 2018. We also
7 received 29 documents that apparently went through
8 the Title 13 DRV review process last week and
9 those 29 documents were deemed nonconfidential.

10 We received these documents after
11 6:00 p.m. last night.

12 Is that your understanding, also,
13 Stephen?

14 MR. EHRLICH: I don't have that email in
15 front of me, but I believe it was yesterday
16 evening.

17 MR. HO: Okay. We have not had adequate
18 time to review those documents in order to prepare
19 for today's deposition. So we'd just like to ask
20 for your consent to keep today's deposition open
21 past today in order for -- for the limited
22 purposes of questioning Dr. Abowd about the

1 documents that were produced last night.

2 MR. EHRLICH: We're not going to consent
3 to that at this time.

4 MR. HO: Oh.

5 MR. EHRLICH: We can see how we go, and
6 if you have questions, you can ask Dr. Abowd about
7 this. We can see where we are at the end of the
8 day. I don't anticipate more than seven hours
9 being needed.

10 MR. HO: We can't ask questions about
11 those documents because we haven't had adequate
12 time to review them, so --

13 MR. EHRLICH: You can ask questions
14 generally about the topics and things like that.
15 We can see where we land at the end of the day.

16 MR. HO: So the record is clear, you're
17 not consenting to permit us to depose Dr. Abowd
18 about the documents that were produced last night
19 after 6:00 p.m. after today; is that correct?

20 MR. EHRLICH: We're not consenting to
21 further time right now, correct.

22 MR. HO: I didn't ask about further time.

1 My question was about the date. You're not
2 consenting to permit us to depose Dr. Abowd about
3 the documents that were produced after 6:00 p.m.
4 yesterday, correct?

5 MR. EHRLICH: We sent them to you, and
6 you're free to use them today. We're not
7 consenting to more than seven hours.

8 MR. HO: My question wasn't about the
9 length of deposition. My question was about
10 whether or not we could continue the deposition
11 after today, and your position is you're not going
12 to consent to us deposing Dr. Abowd after today
13 about documents that you produced after the close
14 of business last night; is that right?

15 MR. EHRLICH: Correct.

16 BY MR. HO:

17 Q Dr. Abowd, could you state your name and
18 spell it for the record?

19 A My name is John Abowd; J-O-H-N,
20 A-B-O-W-D.

21 Q Thank you.

22 Dr. Abowd, my name is Dale Ho, and I

1 represent the New York Immigration Coalition
2 plaintiffs in the case in the Southern District of
3 New York.

4 Before we start today, I just want to go
5 over a few ground rules of today's deposition; is
6 that okay?

7 A Yes.

8 Q You understand that you're under oath,
9 under penalty of perjury today, correct?

10 A Yes.

11 Q Is there any reason you can't testify
12 truthfully today?

13 A No.

14 Q I'm going to ask you when I ask a
15 question to please always respond verbally,
16 because the court reporter can't record gestures
17 or grunts like uh-huh; is that okay?

18 A Understood.

19 Q Just so the court reporter can take
20 everything down, can I ask you to wait until I
21 finish asking a question before you start
22 answering?

1 A Yes.

2 Q And any time you want to take a break is
3 okay. The only exception to that is if I posed a
4 question to, or if anyone else has, to answer that
5 question before your break; is that okay?

6 A Yes.

7 Q Great. You understand that you're
8 testifying today as a representative of the
9 Census Bureau, right?

10 A I do, yes.

11 Q As a representative of the Census Bureau,
12 you'd agree that question sequencing can affect
13 the response rate to a survey, right?

14 A Yes.

15 Q So, in other words, you would agree that
16 if you preface one question, another question or
17 questions, that would affect the survey response
18 rate, right?

19 A Yes.

20 Q And as representative of the
21 Census Bureau, you'd agree that question
22 sequencing can affect the accuracy of responses to

1 that question survey, right?

2 MR. EHRLICH: Objection. Form.

3 THE WITNESS: I understood your question
4 to be that the sequence of questions on a
5 questionnaire can affect the data quality produced
6 by that questionnaire. If that's what your
7 question was, my answer is yes.

8 BY MR. HO:

9 Q Great. So you'd agree that if you
10 preface one question with another particular
11 question or questions, that that could affect the
12 data quality in terms of the accuracy of the
13 response to the question, right?

14 A Yes.

15 Q You'd agree that question sequencing can
16 affect the response rates to a survey in ways that
17 you wouldn't necessarily anticipate at the
18 question drafting stage, right?

19 A Yes.

20 Q And one way you would know that -- sorry.
21 Let me start that again.

22 One way that you would know whether

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1 question sequencing affected response rates would
2 be to test a question in the sequence that it's
3 going to be asked, right?

4 A Yes.

5 Q I want to show you a document, we'll mark
6 it as Exhibit 1.

7 (Plaintiffs' Exhibit 1, Questionnaire for
8 the American Community Survey, was marked.)

9 BY MR. HO:

10 Q Dr. Abowd, this is the questionnaire for
11 the American Community Survey downloaded from the
12 Census Bureau website. Does that look correct to
13 you?

14 A The document I see is the current paper
15 form of the American Community Survey.

16 Q Okay. Could we turn to Page 8 of the ACS
17 survey? And in the left-hand column, Question
18 Number 8 is a question about citizenship; is that
19 right?

20 A Yes. That's correct.

21 Q Now, Question Number 7, the question that
22 immediately precedes the question -- the

1 citizenship question, is a question about where
2 the person was born; is that right?

3 A Yes. That's correct.

4 Q Now, you said this is the print version
5 of the ACS survey questionnaire, right?

6 A Yes. That's correct.

7 Q There's also an Internet version of the
8 ACS questionnaire, right?

9 A Yes.

10 Q Now, if someone answers
11 Question Number 7, the question about where a
12 person was born and says that the person was born
13 in the United States, while taking the Internet
14 ACS survey questionnaire, does that person then
15 see Question Number 8, the question about whether
16 or not the person is a citizen?

17 A No.

18 Q So if someone says --

19 A Excuse me for a second.

20 THE WITNESS: I'm trying to speak up. If
21 you can't hear me, let me know. When my voice
22 fades -- I noted it just fade- -- I have to think

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1 about it.

2 BY MR. HO:

3 Q Thank you.

4 So just to be clear, if someone is taking
5 the ACS Internet survey and they answer in
6 response to the question, where was this person
7 born, in the United States, that person does not
8 see a -- and the answer -- the person was born in
9 the United States, that person does not see the
10 citizenship question, right?

11 A That's correct.

12 Q So if someone says they're born in the
13 United States in response to the ACS Internet
14 survey, there's no way to measure item response or
15 nonresponse to a citizenship question for that
16 person, right?

17 A No. That's not technically correct.

18 Q Okay. Could you explain?

19 A When we compute item nonresponse rates,
20 we would have converted the yes answer from
21 the -- you were born in the United States to a
22 response citizen --

1 Q I see.

2 A -- and then we would compute item
3 nonresponse and item allocation rates on that
4 basis.

5 Q So everyone who answers the Question 7 on
6 the ACS Internet survey and says that the person
7 was born in the United States, that person gets an
8 imputed, yes citizenship answer for
9 Question Number 8; is that correct?

10 A I wouldn't have used the word imputed.
11 They get coded as citizen.

12 Q Okay. Thank you.

13 I want to show you another document.
14 We'll mark this as Census Exhibit 2 --

15 (Plaintiffs' Exhibit 2, Census 2000
16 questionnaire, was marked.)

17 BY MR. HO:

18 Q Dr. Abowd, this is the long form census
19 2000 questionnaire download from the Census Bureau
20 website.

21 MR. EHRLICH: Is that a question?

22 BY MR. HO:

1 Q Does that appear correct to you?

2 A This is the person section. I'm looking
3 for the housing section.

4 Q I think it's only the person section.

5 A Okay. Then, yes. This is the person
6 section of the long form from 2000 --

7 Q From 2000?

8 A -- census, yes.

9 Q Could you turn to Page 4? On the
10 right-hand column, question Number 13 on the 2000
11 long form is a question about whether or not a
12 person is a citizen of the United States; is that
13 right?

14 A Yes. That's Question 13.

15 Q And just like on the ACS, the 2000 long
16 form question about citizenship is immediately
17 prefaced by a question -- or preceded by a
18 question about where the person was born; is that
19 right?

20 A Yes. That's correct.

21 Q I want --

22 A Actually, let me modify it. It's not

1 just like the ACS you showed me, but the questions
2 are in the same order.

3 Q Thank you. I want to show you another
4 document. We'll mark it as Exhibit 3.

5 (Plaintiffs' Exhibit 3, 1950 census
6 questionnaire, was marked.)

7 BY MR. HO:

8 Q I will represent to you this was
9 downloaded from the Census Bureau website as the
10 1950 census questionnaire. Do you see the middle
11 of the questionnaire, roughly, it looks like it's
12 Column Number 13, there's a question about where a
13 person was born, what state or foreign country was
14 he born in?

15 A Yes. I see that in Column 13.

16 Q And immediately after that in Column 14,
17 there's a question, if foreign born, is he
18 naturalized; is that right?

19 A Yes. That's in Column, appears to be,
20 14.

21 Q So the naturalization question on the
22 1950 census questionnaire follows a question about

1 place of birth, right?

2 A It's in the next column. The 1950
3 questionnaire was filled out by an enumerator, not
4 by the householder. So the exact order in which
5 the enumerator filled it out isn't controlled by
6 the way you see the questions.

7 Q So looking at the 1950 census
8 questionnaire, we don't know how -- what sequence
9 an enumerator asked the questions in; is that
10 right?

11 A Well, we would know from the field
12 training instructions, but I was not able to
13 locate them.

14 Q But if you just look at the questionnaire
15 itself --

16 A I agree, they're sequential.

17 Sorry. I should have let you finish.

18 Q Is it fair to say the questions about
19 citizenship on the ACS, the 2000 long form and in
20 the 1950 census questionnaire, are preceded by a
21 question about place of birth?

22 A Yes.

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1 Q Now, as planned, the question about
2 citizenship on the 2020 decennial questionnaire,
3 that's the same citizenship question as
4 Question Number 8 on the ACS; is that right?

5 A I'm only verifying the question numbers,
6 because I don't have it memorized.

7 Q Sure. It's on Page 8.

8 A Yes. That's correct.

9 Q At present, there are no plans to add a
10 place of birth question to the decennial census
11 questionnaire, right?

12 A That's correct.

13 Q There has been no cognitive testing of
14 this citizenship question without a question about
15 place of birth; is that right?

16 MR. EHRLICH: Objection. Form.

17 THE WITNESS: I'm not prepared to answer
18 whether there has been no cognitive testing of
19 this question without being preceded by what we
20 would call a nativity question. In the
21 experiments and the evaluations that the
22 Census Bureau has been able to locate, the survey

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1 testing has not been conducted without a nativity
2 question preceding the citizenship question.

3 BY MR. HO:

4 Q So you're not aware of any testing -- any
5 cognitive testing of the citizenship question
6 without a preceding question about nativity; is
7 that right, Dr. --

8 A I'm not aware of -- sorry. I'm not aware
9 of any, no.

10 Q Are you aware of any prior census in
11 which cognitive testing of the full short form
12 questionnaire had not been conducted before using
13 that questionnaire for the actual census?

14 A I am not aware of any -- well, let me be
15 careful.

16 Many censuses were conducted without
17 cognitive testing, the equivalence of cognitive
18 testing existed for much of the 20th century. In
19 preparing for this deposition, I reviewed the
20 generic answer to the question, how was this
21 tested, and in some cases, that question elicited
22 some cognitive testing, for example, the

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1 Current Population Survey, and the
2 American Community Survey. In other cases,
3 historical censuses back in the '80s, '70s and
4 '60s, no one could produce cognitive testing.

5 Q So --

6 A I didn't specifically ask -- I asked, any
7 testing? And what I got was the sort of standard
8 protocol testing.

9 Q So you're not aware of any
10 circumstance -- any previous decennial
11 census -- excuse me. Let me start that again.
12 Since there's been cognitive testing of
13 the decennial short form questionnaire, you're not
14 aware of any time in which a full short form
15 questionnaire has been deployed without
16 cognitively testing that full short form
17 questionnaire, are you, Dr. Abowd?

18 A I need to answer that question in a more
19 nuanced form.

20 I am not certain that the full
21 questionnaire was cognitively tested for the
22 period in which the question appeared on the long

1 form. I am certain that the questions for the
2 American Community Survey and the 2010 census were
3 put through the full battery of the tests.

4 If you would like, during the break, I
5 will call and ask for cognitive testing of the
6 censuses prior to the 2010.

7 Q Well, so just stick with the 2010. The
8 full short form census enumeration questionnaire
9 was cognitively tested before being deployed for
10 the actual 2010 census, correct?

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11 A That is my understanding. But it may
12 have been question by question. I will -- I will
13 actually, during a break, ask a more specific
14 question about the form of the testing.

15 Q Dr. Abowd, has there been any field
16 testing of the citizenship question that's going
17 to be used on the 2020 census without a prefatory
18 question about nativity?

19 A No.

20 Q And there's been no field testing of the
21 full 2020 census questionnaire, including the
22 citizenship question, correct?

1 A That's correct.

2 Q And before the 2010 census, as far as you
3 know, there was field testing of the full short
4 form census questionnaire, right?

5 A Yes.

6 Q At present, there are no plans for field
7 testing of the full 2020 census questionnaire,
8 including the citizenship question; is that right?

9 A That's correct.

10 Q Why not?

11 A In May of 2016 the -- Enrique Lamas, the
12 associate director for demographic programs, who
13 is performing the nonexclusive functions and
14 duties of the deputy director -- and I'm going to
15 call him the acting deputy director from now on --
16 the acting deputy director asked Victoria Velkoff,
17 the chief of the American Community Survey Office,
18 to design a field experiment for the census
19 questions in the exact ACS form and without a
20 lead-in nativity question using the experimental
21 components of the American Community Survey, which
22 allow us to deploy test instruments without

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1 disrupting the production instrument, but with a
2 proper experimental design.

3 Tori drafted such an experiment. It
4 included multiple forms of the citizenship
5 question; the one that is in the ACS, the shorter
6 one that's in the Current Population Survey, and
7 no citizenship question, at all. Designed a
8 randomized controlled trial of those questions,
9 controlled to produce sampling errors of either a
10 half of a percent or one percentage point and
11 presented the plan to the acting deputy director
12 and its budget.

13 The acting deputy director and
14 Ron Jarmin, the deputy director performing the
15 nonexclusive functions and duties of the director,
16 and I'm going to call him the acting director from
17 now on. The acting director and Enrique decided
18 that the experiment which could not be deployed
19 until the earliest, November of 2019, and possibly
20 not until the following February, I believe, was
21 not going to produce sufficient information to be
22 worth deploying. In their opinion, and in the

1 opinion of the Census Bureau professionals, the
2 citizenship question, even without a nativity
3 lead-in, has been adequately tested.

4 Q I believe you said that it was in May of
5 2016 --

6 A I said -- I may have said '19, but I
7 meant May of 2018. It was after the
8 Secretary -- sorry. Thank you for correcting me.
9 It was after the Secretary instructed us to add
10 the question. It was in May of this year.

11 Q Thank you for clarifying.

12 Dr. Abowd, what is the Center For Survey
13 Measurement within the Census Bureau?

14 A The Center For Survey Measurement is a
15 group of, primarily, behavioral scientists and
16 survey methodologists led by Paul Beatty who is
17 the chief.

18 Q And what does -- I'll call it CSM for
19 short -- what does CSM do?

20 A CSM does a variety of questionnaire
21 testing and qualitative research, leading content
22 recognition questionnaire layout, ISR -- Internet

1 self-response instrument design, focus groups,
2 related behavioral science research.

3 Q Fair to say that they are involved in
4 testing Census Bureau questionnaires?

5 A Yes.

6 Q Fair to say that they assess whether or
7 not a particular questionnaire has been tested
8 adequately?

9 A They assess survey development at all
10 stages of the survey lifecycle, including the one
11 that you referenced.

12 Q And were the professionals in CSM asked
13 their opinion as to whether there had been
14 adequate testing of the ACS citizenship question
15 to add it to the decennial enumeration
16 questionnaire?

17 A In the course of developing our technical
18 response to the Department of Justice request, the
19 first group interviewed by the technical response
20 team was a group from the Center For Survey
21 Measurement, and they were asked about the quality
22 of the citizenship question on the

1 American Community Survey.

2 Q And what did they say?

3 A They said that the question itself had
4 had cognitive testing, and that it had been
5 successfully deployed in the field. The last time
6 that that question form underwent extensive
7 testing was in 2006 where alternative versions of
8 it were developed through the full lifecycle
9 process and field experiment.

10 Q When you say they, who are you referring
11 to?

12 A I'm not sure. I might have used the
13 antecedent -- free pronoun a couple of times. If
14 you read back the record, I'll tell you who I was
15 talking about.

16 Q I believe you said they said that the
17 question itself had had cognitive testing, and
18 that it had been successfully deployed in the
19 field. Who is they?

20 A Okay. They would have been the group
21 from the Center For Survey Measurement that the
22 SWAT team interviewed.

1 Q And who would they be?

2 A I'm -- I'm not sure how many people were
3 in the room. I'm also not sure everyone in the
4 room was from the Center For Survey Measurement.
5 The -- usually, Paul Beatty, the center chief is
6 in the room when a team is giving input like that.
7 I can call and find out exactly who was in the
8 room. I didn't ask.

9 Q Let's stick with Mr. Beatty, did
10 Mr. Beatty --

11 A I'm not sure he was even in the room. I
12 just said usually, he's in the room.

13 Q Okay. Fair enough.

14 But let's talk to Mr. Beatty for a
15 second. Did Mr. Beatty express a view whether the
16 testing of the ACS citizenship question was
17 adequate for placing that question on the
18 decennial enumeration?

19 A I do not know.

20 Q Did anyone among -- at CSM express
21 concerns that there had been inadequate testing of
22 the ACS citizenship question for purposes of

1 adding it to the decennial enumeration?

2 A I don't think so. In preparing for this
3 testimony, I asked all of the people who had been
4 involved in the -- in the technical work that was
5 done at the Census Bureau with regard to the
6 citizenship question, the current environment,
7 since December of 2017, whether they knew of
8 research or reservations about the citizenship
9 question, and I didn't get any recorded.

10 The acting deputy director summarized the
11 research, and since he was the associate director
12 for demographic programs and had a long history in
13 that part of the Census Bureau, we accepted his
14 summary. And his summary of the search
15 was -- research was that the citizenship question
16 had been more than adequately tested on the
17 American Community Survey.

18 Q When you say more than adequately tested,
19 did he express a view as to -- never mind.

20 Assuming that the citizenship question is
21 on the decennial enumeration questionnaire, is it
22 going to remain a part of the American Community

1 Survey questionnaire?

2 A The acting director has formed an
3 internal expert panel. I testified about it in my
4 direct testimony -- my fact testimony. The -- I
5 may not have given the complete composition of it
6 at that time, but it's a 13-member expert panel,
7 charged them with drafting decision documents
8 about questions like the one you just asked. They
9 have been given until March 31st of 2019 to -- to
10 write a draft decision document about the way the
11 citizenship question will be processed on the 2020
12 census and the way the Citizenship Voting Age
13 Population Table by Race and Ethnicity at the
14 block level will be produced. The rest of their
15 charter, they have not been given a specific
16 timeline for.

17 Q So just -- not about the processing of
18 the CVAP data, but just a question about whether
19 or not the citizenship question on the ACS will
20 remain on the questionnaire --

21 A I --

22 Q -- is that one of the questions that

1 they -- this internal expert panel is considering?

2 A I understood your question. And, yes,
3 that is in their charge. It's not in their charge
4 specifically, tell us to take the question off the
5 ACS. It's in their charge specifically to write
6 standards for how surveys will be conducted if in
7 the view of the experts producing the data there
8 are alternative sources for particular questions.
9 It's not just about administrative record sources
10 for alternative questions. There are other
11 alternative sources that we might consider using
12 in the future. So we haven't made a decision is
13 the right answer to that.

14 Q What are some reasons why the citizenship
15 question might be removed from the
16 American Community Survey questionnaire?

17 A We regularly do content reviews of all of
18 our periodic surveys and -- I may have just put
19 the ACS in an improper budget category -- what I
20 mean by that term, the ones we ask on a repeated
21 basis -- to assess that the content is still
22 timely with respect to the well-established and

1 new use cases for those data.

2 Trading off against that is our
3 obligation to minimize burden on the respondents
4 to those surveys. So if in the course of testing
5 and research and content review, we are able to
6 reduce burden by producing data as good or better
7 quality by combining multiple sources, we do that.

8 And in the economics area, we have done
9 that for decades. So the multiple source
10 production of data is not new but many different
11 expert panels -- not the ones inside the Bureau,
12 but outside the Bureau and other statistical
13 agencies have, as they move into the 21st Century,
14 they have recognized you have to develop standards
15 for this. The Federal Committee on Statistical --
16 FCSM, Federal Committee on Statistical
17 Methodology, has also been developing standards
18 for using multiple sources to produce information
19 products. So this is -- as a part of your normal
20 content review for the ACS, the question will be
21 on the table, can we replace any of the survey
22 questions with alternative sources, and one of

1 those alternative sources might be administrative
2 record citizenship table.

3 Q So just to be clear, you may remove the
4 ACS citizenship question from the ACS
5 questionnaire in order to reduce burden on survey
6 respondents; is that right?

7 MR. EHRLICH: Objection. Form.

8 THE WITNESS: We may remove the
9 citizenship question from the American Community
10 Survey in the future, yes.

11 BY MR. HO:

12 Q If you remove the citizenship question
13 from the American Community Survey questionnaire,
14 would that mean that the only available
15 citizenship data for redistricting purposes at
16 that point would be from the decennial
17 enumeration?

18 MR. EHRLICH: Objection. Form.

19 THE WITNESS: If we remove a question --
20 that was a generic -- deliberately generic -- a
21 question from the American Community Survey, there
22 could be multiple reasons. One reason might be

1 that there is no longer a valid use case for
2 producing an information product based on the
3 answer to that question.

4 Another reason might be because there's
5 an alternative way of developing as good or better
6 quality information product without asking the
7 question on the survey. I anticipate -- but this
8 is a predetermining decision-making process that
9 hasn't happened -- that there would be a
10 continuing valid-use case for citizenship data.
11 So even if we took it off the American Community
12 Survey, we would not stop producing statistical
13 information products that contain citizenship
14 data.

15 BY MR. HO:

16 Q Let's talk about some of those
17 information products. Now, the Census Bureau
18 produces various data files for redistricting
19 purposes, right, Dr. Abowd?

20 A Yes.

21 Q And one of those redistricting data
22 products by the Census Bureau is the P.L. 94-171

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1 data file, right?

2 A Yes.

3 Q The Department of Justice uses the
4 P.L. 94-171 data file; is that your understanding?

5 A Yes.

6 Q And the P.L. 94-171 data file is also
7 available to the public, right?

8 A Yes.

9 Q The P.L. 94-171 data file has information
10 in it concerning the population and
11 characteristics of people at various levels of
12 census geography, including census blocks, right?

13 A Correct.

14 Q And the PL 94-171 data file is based on
15 responses to the decennial enumeration, correct?

16 A Correct.

17 Q The P.L. 94-171 data file is considered
18 reliable, correct?

19 MR. EHRLICH: Objection. Form.

20 THE WITNESS: The P.L. 94-171
21 redistricting data are produced under the law of
22 the same name by negotiation between the

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1 Census Bureau redistricting office and 51 state
2 and the Washington, D.C. redistricting offices to
3 meet the requirements of redistricting legislative
4 districts in the states. The Census Bureau
5 provides data to the states and District of
6 Columbia in the support of redrawing every
7 legislative district in the country.

8 BY MR. HO:

9 Q Dr. Abowd, the Census Bureau doesn't
10 consider the P.L. 94-171 data file unreliable,
11 does it?

12 A No. I was trying to state the use case
13 for which reliable is defined, but I forgot to
14 finish my answer.

15 We believe that the P.L. 94-171 data are
16 reliable for redistricting and reliable for their
17 Department of Justice Voting Rights Act
18 enforcement uses.

19 Q The P.L.94-171 data file has never had
20 citizenship data in it; is that correct?

21 A That is correct.

22 Q Now, another redistricting product

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1 produced by the Census Bureau is the special
2 tabulation of CVAP and other ACS data; is that
3 right?

4 A So that's not technically right.

5 Q Okay.

6 A The redistricting office initially
7 request -- initially assisted the
8 Department of Justice in the design and production
9 of a special tabulation of Citizen Voting Age
10 Population by Race and Ethnicity and at the block
11 group level. I'm just going to say CVAP from now
12 on.

13 CVAP, because of a use case that the
14 Department of Justice had, it was subsequently put
15 into regular production, so it's produced
16 regularly. And its timing is now such that it can
17 be used in conjunction with the P.L. 94-171 data,
18 but no statute obligates the production of CVAP
19 and no statute obligates the negotiation with part
20 of government on to its form and content.

21 Q That special tabulation of CVAP data
22 is available to the public, right, Dr. Abowd?

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1 A So I just corrected your word of special
2 tabulation. It's a regular tabulation now.

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3 Q Sorry. Thank you.

4 A And yes. It and all tabulations released
5 for any purpose are released to everyone.

6 Q The tabulation of CVAP data, it's
7 considered reliable by the Census Bureau, right?

8 MR. EHRLICH: Objection. Form.

9 THE WITNESS: The Census Bureau -- the
10 CVAP table, as produced from the American
11 Community Survey, is tabulated at the block group
12 level with margins of error. And so it is
13 incumbent upon the user of the CVAP table to
14 understand the limitations of data that are
15 produced with margins of error and to use them in
16 a manner that they're fit for.

17 BY MR. HO:

18 Q The estimates and margins of error in the
19 tabulation of CVAP data produced by the
20 Census Bureau are considered accurate by the
21 Census Bureau, right, Dr. Abowd?

22 MR. EHRLICH: Objection. Form.

1 THE WITNESS: The estimates in the CVAP
2 table are considered correct by the Census Bureau.
3 Meaning, that they were processed from the
4 American Community Survey according to a survey
5 design that was properly executed, and the steps
6 that were taken in the post processing of those
7 results are also according to the survey design.
8 So that when they are estimated, that is the
9 proper design estimate, and when this margin of
10 error is released, that is the number that we
11 believe is an appropriate indication of the
12 90 percent confidence interval.

13 BY MR. HO:

14 Q Now, the data in that tabulation, that's
15 based on five-year pooled ACS data; is that
16 correct?

17 A The CVAP is produced from what we call
18 the five-year ACS data, which is a rolling
19 five-year window on the American Community Survey.

20 Q The tabulation of CVAP data is not based
21 on a single year of ACS respondents, correct?

22 A That's correct.

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1 Q Why is the tabulation based on five-year
2 ACS pooled estimates instead of single-year
3 estimates?

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4 A In the design of the American Community
5 Survey tabulations that are produced using a
6 single year of data, we only believe sufficiently
7 reliable for communities that are at least 65,000
8 population.

9 Q Now, unlike the P.L. 94-171 file, the
10 tabulation of CVAP data obviously includes
11 citizenship information, right, Dr. Abowd?

12 A Yes.

13 Q Now, prior to the December 2017 letter
14 from Arthur Gary at the Department of Justice, had
15 you ever heard any suggestion that the citizenship
16 data contained in the tabulation of CVAP was
17 insufficient for the purposes of DOJ's
18 Voting Rights Act enforcement?

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19 A From the Department of Justice, no.

20 Q Had you heard that the -- let me start
21 again.

22 Prior to the 2017 Gary letter, had you

1 ever heard from anyone, other than the
2 Department of Justice, that the tabulation of CVAP
3 data was insufficient for Voting Rights Act
4 enforcement purposes?

5 A I had not heard that was insufficient. I
6 had heard that it was difficult to use. There's a
7 nuanced difference between them, but that's what I
8 had heard.

9 Q And who had you heard that it was
10 difficult to use from?

11 A I believe I explained this in my fact
12 testimony, but I'll -- I will do it again.

13 Independent of the question about whether
14 to put a citizenship question on the 2020 census,
15 one of the areas at the Census Bureau that I was
16 asked to modernize was the disclosure avoidance
17 system that we use. And that work began in 2016
18 when I arrived as the chief scientist. The use
19 case for P.L. 94-171 and the use case for CVAP are
20 intimately related, because of the requirement
21 that you be able to build legislative districts
22 that meet the one-person, one-vote requirement and

1 satisfy Section 2 scrutiny of the Voting Rights
2 Act from the smallest granule level of geography
3 that will allow you to get the one-person,
4 one-vote part right. In -- once you're done with
5 that, then you have to demonstrate, as well, that
6 there's an adequate number of eligible voters in
7 that district to continue to meet your Section 2
8 scrutiny.

9 So experts that I interviewed, when we
10 were talking about the disclosure modernization
11 for the P.L. 94 said it's already extremely hard
12 to combine the P.L. 94-171 data and the CVAP data,
13 because you have to model down the block group
14 level data to the block level. And once you've
15 done that, controlling the margin of error in your
16 resulting districts is problematic and a lot of
17 the alternative ways of doing it come from
18 alternative ways of modeling that process.

19 So I was trying to learn -- in my
20 official capacity, I was trying to learn what the
21 use case was for the P.L. 94 when the user
22 volunteered, but one of the problems that they

1 encountered was the combining of.

2 And I asked the redistricting office if
3 it was a politically-loaded question to say
4 improving the way that the citizen data could be
5 combined with P.L. 94 or was that something that
6 would have bipartisan agreement, and he didn't
7 answer right away. It was James Whitehorne, the
8 chief of the redistricting office. He did his own
9 independent research. And he came back and said
10 it's not political to say that improving the way
11 that is citizen -- the CVAP and P.L. 94 would be
12 an improvement.

13 Q When was that conversation with
14 Mr. Whitehorne?

15 A I don't remember exactly. It was in 2017
16 at some point.

17 Q Before receipt of the Gary letter?

18 A Yes. All of this was before receipt.

19 Q You mentioned talking to experts who said
20 it was difficult to combine the P.L. data file
21 with the CVAP. Who are those experts?

22 A I wasn't able to specifically recall all

1 of them. I recall talking to Professor Gary King
2 at Harvard. Professor Mike -- I believe his last
3 name is McMahn, at the University of Florida.

4 Q Could it be Mike McDonald at Florida?

5 A That's it.

6 And the chief of the bipartisan
7 commission at -- in California. I remember her
8 title but not her name. And I don't have notes.

9 And I may have talked to some others, but
10 it was those three primarily, especially the
11 California one. She was able to give me very
12 detailed use cases. Not actual code, but
13 precisely how they combined various things.

14 Q Let's talk about you mentioned disclosure
15 avoidance. I want to ask you a couple questions
16 about that.

17 The citizenship data in the CVAP
18 tabulation, I believe you said before, those are
19 estimates at the block group level, correct?

20 A That's correct. Technically, so are the
21 P.L. 94-171, but they're official estimates.

22 Q Now -- but the difference is, the P.L. 94

1 data, that data doesn't have error margins
2 associated with it in the way that the CVAP
3 tabulation, which is based on a survey sample does
4 have error margins, correct?

5 A The P.L. 94-171 data are not sample
6 based. They do have margins of error. We don't
7 discuss it very much, but they're not -- they're
8 not because of the sample. They're because of the
9 statistical methods that intervene in converting
10 the responses to tabular data, including
11 disclosure avoidance. The CVAP table is based on
12 a multistage probability sample, and so it has a
13 design that implies that it has a sampling error.
14 And it is the sampling error that we tabulate in
15 our margins of error.

16 Q Okay. So just to be clear about the
17 different data forms. The P.L. data, that has
18 some errors associated with it, right?

19 A Yes.

20 Q It doesn't have the kind of standard
21 error associated with an estimate based on a
22 statistical sample, right?

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1 A It doesn't have sampling error.

2 Q Thank you.

3 The tabulation of CVAP data does have
4 sampling error associated with it, correct?

5 A Yes.

6 Q So when you publish the CVAP tabulation,
7 you're not publishing any particular person's
8 responses to the ACS citizenship question in a way
9 that would enable you to identify that person's
10 responses, correct?

11 A If we did not apply disclosure avoidance
12 prior to the tabulation, then the CVAP table, as
13 well as the P.L. 94 tables, would be subject to
14 reidentification risks.

15 Q So what are the disclosure avoidance
16 steps that are used for the tabulation of CVAP
17 data?

18 A The CVAP data are tabulated from the
19 production of the American Community Survey Office
20 tabulation system. The exact specification for
21 the disclosure avoidance that has been applied to
22 them is confidential and I can't give you those

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1 specifications. What we say in our technical
2 documents is that we apply household-level
3 swapping and some synthetic data noise infusion.

4 Q Let's talk about those two things.
5 What's household-level swapping?

6 A Household-level swapping means that the
7 certain variables on the household record, not the
8 person record, certain variables on the household
9 record are matched to variables on a household
10 record in a different geographic area. And if the
11 household is selected for swapping, and when the
12 match is found, essentially all the values are
13 swapped, except the address ID. So it looks as if
14 the data from a different address lived at the
15 address of the original and vice versa.

16 Q So when you're building the CVAP
17 tabulation, in some cases, it's based on data
18 that's been swapped between two households where
19 the ACS citizenship response for one household has
20 been swapped with another; is that right?

21 A I am only allowed to tell you the
22 variables that are used in the swap that are in

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1 public documents. And I told you what was in the
2 public documents.

3 Q Okay.

4 A So the swap controls for family size, for
5 the number of persons in -- not family size. That
6 was not a correct technical term.

7 Q Household?

8 A Household size. Thank you.

9 And the number of members of the
10 household above voting age -- voting age or above.

11 Q When households are swapped, at what
12 level of geography are they swapped?

13 A I'm only allowed to say that the search
14 is over nearby geographic regions.

15 Q So you're not swapping someone from Maine
16 with someone in Arizona?

17 A I'm also allowed to say that the swap
18 never crosses state lines.

19 Q Does the swap ever cross county lines?

20 A If you can produce a technical document
21 that says it does or doesn't, I can confirm it. I
22 can't remember ever reading that, one way or

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1 another.

2 Q And can you say, one way or another,
3 whether or not the swap ever occurs across census
4 block group lines?

5 A I have read a lot of the public
6 documents. I have also read a lot of the
7 confidential documents. I do not recall any
8 public document explicitly saying anything other
9 than we don't swap across state boundaries.

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10 Q And do -- so that would -- okay.
11 Thank you.

12 Well, does swapping ever occur between
13 census blocks?

14 MR. EHRLICH: Objection. Form.

15 THE WITNESS: Of course swapping occurs
16 across census blocks, because there would be no
17 point in it otherwise.

18 BY MR. HO:

19 Q You mentioned synthetic data noise
20 infusion for disclosure avoidance. Can you
21 describe what you mean by that?

22 A There are two methods of doing that. The

1 one that is used in the American Community Survey
2 is to develop a model for when a particular record
3 or item on a record is sensitive. The models are
4 more precise, but, again, their parameters are not
5 confidential. Basically, you think of extreme
6 values as sensitive.

7 And then the statistical model replaces
8 the sensitive value with a value that's sampled
9 from the model and from the error distribution of
10 the model.

11 Q The plan after collecting the citizenship
12 responses from the enumeration is to deliver
13 block-level citizenship data to the
14 Department of Justice for the purposes of VRA
15 enforcement, right, Dr. Abowd?

16 A Yes.

17 Q The block-level citizenship data that the
18 Census Bureau is going to deliver to the
19 Department of Justice, will that be based
20 primarily to the citizenship question on the
21 decennial enumeration questionnaire?

22 A The internal expert panel has been

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1 charged explicitly with determining both the
2 processing of the answers to the citizenship
3 question in the internal files and the formulation
4 for the CVAP table at the block level.

5 Q So as of right now, a decision has not
6 been made yet as to whether or not the CVAP
7 table -- table that is produced to the
8 Department of Justice is going to be based
9 primarily on responses to the citizenship question
10 on the decennial enumeration or on a different
11 source; is that right, Dr. Abowd?

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12 A With one correction. We are not
13 producing a CVAP for the Department of Justice.
14 We are producing a CVAP table at the block level
15 as a public use product.

16 Q But otherwise, the answer to my question
17 is yes?

18 A We have not made a decision on the way in
19 which we will aggregate the data to the block
20 level.

21 Q Other than responses to the citizenship
22 question on the decennial questionnaire, what

1 other data sources might you use in the production
2 of the block-level CVAP table?

3 A We have said that we will use
4 the -- what's called the census NUMIDENT data. In
5 addition, we are negotiating with the
6 U.S. CIS -- Customs and Immigration Service, did I
7 expand it right -- U.S. CIS and with the
8 State Department to acquire additional citizenship
9 data and data on visas that have been issued to
10 legal visitors to the United States.

11 Q Is it fair to say that it has not yet
12 been decided precisely how the block-level CVAP
13 table will be assembled?

14 A That's correct.

15 Q Has it been decided whether or not the
16 block-level CVAP data will be included in the
17 P.L. 94-171 data file?

18 A It has not.

19 Q Let me show you a document. We'll mark
20 this as Exhibit 4.

21 (Plaintiffs' Exhibit 4, Federal Register
22 notice, was marked.)

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1 BY MR. HO:

2 Q This is a Federal Register notice. This
3 is a Federal Register notice from the
4 Department of Commerce on proposed information
5 collection and a comment request and the 2020
6 census.

7 Have you seen this document before?

8 A Yes, I have.

9 Q I want to turn to the second page of the
10 document -- oh, sorry, just for the record, it's
11 dated June 8, 2018, and the first page on it is
12 26643.

13 I'd like to turn to the second page of
14 the document, that's Page 26644. And the middle
15 column, the second paragraph, about halfway down
16 there is a sentence that starts with "If
17 stakeholders."

18 Do you see that?

19 A Yes.

20 Q The sentence reads, "If stakeholders such
21 as the National Conference of State Legislatures
22 elect to receive tabulations of citizenship data,

1 the Census Bureau will make/require" -- I think
2 that's a typo -- "a change" -- "a design change to
3 include citizenship as part of the Public Law
4 94-171 redistricting data file."

5 So I want to ask you a question about
6 that sentence. If stakeholders do elect to
7 receive citizenship data, what kind of design
8 change can be made to the P.L. 94-171 file to
9 include citizenship information at the census
10 block level?

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11 A So I was, of course, aware of that
12 sentence. The way that redistricting office
13 interacts with the National Conference of
14 State Legislatures, as is described in the
15 statute, as I understand it, is to attempt to meet
16 their data needs, and their data needs are
17 specifically what's required to redraw legislative
18 districts. So that's why the redistricting office
19 worked with the American Community Survey office
20 to get the CVAP tabulation to be released in a
21 timely manner with respect to redistricting in the
22 first place.

1 My understanding -- careful. I was told
2 very carefully -- the Census Bureau's
3 understanding is that if the partners, the
4 National Conference of State Legislatures, wish to
5 receive the CVAP table at the block level,
6 simultaneous with the P.L. 94-171 tabulation --
7 that we announced the design of a previous
8 Federal Register notice, but I don't know the
9 notice number -- that we would facilitate that.

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10 Since the tabulations are all done using
11 census geography, there are a number of relatively
12 straightforward ways to facilitate simultaneous
13 release and use of a CVAP block-level table and
14 the P.L. 94-171 table that we've prespecified in a
15 previous Federal Register notice.

16 Q Have there been any conversations with
17 the Department of Justice about the format in
18 which the Census Bureau will deliver block-level
19 citizenship data?

20 A I believe the answer to that question is
21 no. There have been meetings with the
22 Department of Justice, and they have been about

1 the form of the CVAP and P.L. 94 data, but I don't
2 believe we've had any specific discussion about
3 the format. I believe that we presume that our
4 data production systems, when we say we're going
5 to deliver data at the block level, we'll deliver
6 data at the block level in a way that the
7 receiving users already understand how to use. So
8 we're planning to disseminate the products in
9 CEDSCI system at the block level and that's the --
10 that is the distribution medium that we would be
11 working towards using. No one has mentioned that
12 that's problematic.

13 Q I'm sorry. I think I probably asked the
14 wrong question.

15 A That's possible.

16 Q So --

17 A I hope I answered the right one.

18 Q We talked earlier about how the
19 Census Bureau has not yet determined how it's
20 going to assemble the CVAP tables, whether it will
21 be based on the census enumeration questionnaire
22 responses, some other data source, what mix of

1 those things.

2 Do you remember that, Dr. Abowd?

3 A Yes.

4 Q Have there been conversations with the
5 Department of Justice about how the
6 Department -- sorry -- how the Census Bureau is
7 going to assemble that block-level CVAP data, that
8 is, whether it will be based on the enumeration
9 questionnaire responses or the administrative data
10 or something else?

11 A There have been conversations with the
12 voting rights division or branch -- I'm not sure
13 which -- the voting rights section of the
14 Department of Justice about the consequences of
15 the disclosure modernization on the tabular data.
16 And so we were trying to educate them on that.
17 That doesn't affect how the census responses and
18 the administrative data might be combined to
19 produce those tabular data. There's a variety of
20 ways in which they can be combined that are going
21 to result in tabular data with the same
22 statistical properties.

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1 Q So just to be clear, there have been no
2 conversations with the Department of Justice about
3 how the different forms of citizenship data are
4 going to be combined for purposes of assembling
5 the CVAP table?

6 A None that I'm aware of, and during a
7 break, I'll ask to make sure there aren't some
8 that I wasn't aware of.

9 Q Now, you did mention some conversations
10 between the Census Bureau and the voting section
11 at DOJ. Who were those conversations between,
12 both on the DOJ and the census side?

13 A So the meeting was arranged by
14 James Whitehorne, who is the chief of the
15 redistricting office. On the Census Bureau side,
16 a number of experts were present, primarily
17 disclosure avoidance experts, but there were also
18 subject matter experts present. On the DOJ side,
19 the chief of the section was present and staff
20 familiar with the Voting Rights Act.

21 Q Was Mr. Whitehorne present at that
22 meeting?

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1 A Yes, he was.

2 Q When you say the chief of the voting
3 section, is that Chris Herron?

4 A I'm going to have to check a meeting
5 invitation list. I don't remember that person's
6 name.

7 Q Do you know the names of any of the DOJ
8 personnel who were present at that meeting?

9 A James Whitehorne knew the names of all of
10 them, and I got their cards.

11 Q Okay. You were present at the meeting?

12 A Yes. I was present at the meeting.
13 Sorry.

14 Q When did that meeting take place,
15 roughly?

16 A Within the last three months, after --
17 after the Secretary's announcement and before
18 people started going on summer holidays.

19 Q Were there any other meetings between
20 Census Bureau personnel and the
21 Department of Justice about the issues that we've
22 been talking about?

1 A I believe the answer to that is no,
2 because James has been inviting me to those, but I
3 will also check to make sure.

4 Q Roughly, how long did the meeting last?

5 A About an hour.

6 Q Where was it?

7 A DOJ.

8 Q Just backing up for a moment, a census
9 block is the lowest level of census geographic,
10 correct?

11 A Correct. Tabular geographic.

12 Q Census block could have as few as ten
13 people in it, right, Dr. Abowd?

14 A A census block can have no people in it.

15 Q And a census block could have one person
16 in it, right?

17 A That's also correct.

18 Q I want to show you a document -- let's
19 mark this as Exhibit 5.

20 (Plaintiffs' Exhibit 5, Map, was marked.)

21 BY MR. HO:

22 Q I will represent to you this is a map

1 derived from census data on the Census website.
2 It was produced by adjoining tiger files with the
3 P.L. 94 data file after the 2010 census, and it's
4 a map of an area in Fort Myers, Florida.

5 So you recognize the rectangles and other
6 shapes on this map as census blocks, right,
7 Dr. Abowd?

8 A Well, I can't independently verify that,
9 but certainly looks like it's right.

10 Q And some of these census blocks have no
11 people in them, some of them have just a single
12 person on it, right?

13 A Are you asking me to say that the number
14 that's sitting in the middle there is a population
15 count?

16 Q I'll represent to you that that's -- that
17 the numbers are population counts, and assuming
18 that that's correct, some of the census blocks
19 represented on this map have only one person on
20 them, right, Dr. Abowd?

21 A Yes. I found a singleton.

22 Q Let's talk about that singleton. Now,

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1 you'd agree with me, Dr. Abowd, that if you
 2 publish citizenship information at the block level
 3 based on the responses to the decennial
 4 enumeration solely -- so ignore the administrative
 5 data for a second -- then any singleton, any
 6 person who is the one individual on a census
 7 block, you would be publicizing that person's
 8 response to the citizenship question, correct?

9 A No.

10 MR. EHRLICH: Objection. Form.

11 THE WITNESS: No.

12 BY MR. HO:

13 Q Why not?

14 A Hasn't been correct since 1990.

15 Q Please explain to me why that's the case.

16 A Even before we considered the citizenship
 17 variable, that one person, that household that has
 18 only one person in it, had other characteristics,
 19 and the goal of our disclosure avoidance system
 20 has been to inhibit a user's ability to say that
 21 the person identified as that one count here has
 22 these characteristics.

Vague; Calls
 for
 speculation

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1 In 2000 and 2010, that was accomplished
2 by swapping, primarily. In 2020, that's going to
3 be accomplished by what's called differential
4 privacy. They amount to similar goals. One is a
5 more hardened technique.

6 Q Uh-huh.

7 A But, basically, if you do it properly,
8 then everything is an estimate and nothing is an
9 exact tabulation of what happened there.

10 Q Okay. So for these singletons, when you
11 publish block-level CVAP data, a census block with
12 one person on it and you publish data that shows
13 whether or not that person is a citizen, you're
14 telling me that's not going to disclose that
15 person's actual citizen status?

16 A It's not even going to be that person's
17 actual citizenship value for any person.

18 Q So the -- just to be clear -- I just want
19 to be clear about this. The CVAP block-level data
20 that gets produced by the Census Bureau, in some
21 cases, the block-level citizenship values that are
22 reported on that table are not going to be the

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1 actual citizen statuses of the person or persons
2 on that census block; is that right?

3 A No, not in some cases. In all cases.

4 Q Okay.

5 A There won't be a single block in which
6 the citizenship variables or the race and
7 ethnicity variables are the values reported by the
8 people who live there.

9 Q So I'm new to this, so I just -- forgive
10 me.

11 A You're not the only one.

12 Q I want to come back to that.

13 But just explain this to me like a fifth
14 grader, okay? When you publish -- after the 2020
15 enumeration, when you publish block-level
16 citizenship data and you say X number of people on
17 a particular census block, whether it's one out of
18 one people, eight of ten people, whatever the
19 number is, are citizens, according to the table,
20 that table will not accurately reflect the
21 citizenship status of the people enumerated in
22 those citizen blocks; is that right, Dr. Abowd?

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1 A No. But I'm actually going to treat you
2 like a college-aged person and not a fifth grader.

3 Q Let me just get a clarity on what the no
4 was, no. No, I was not right or no --

5 A That's correct. No, you were not right.

6 Q Please explain to me.

7 A The use case for block-level data is not
8 that when I take a microscope to the census and I
9 look at a block, the answers I get there are right
10 for that block. That would be enormously
11 disclosive and would be almost impossible to
12 prevent reidentification of the confidential Title
13 13 data, and we haven't done that -- we didn't do
14 it in 2010. We didn't do it in 2000.

15 What has happened between 2010 and 2020
16 is that we now actually know how to produce
17 block-level data that are suitable for their use
18 without having to put the exact -- what you call
19 accurate, but I think you really mean exact
20 tabulation in that block. It's too dangerous in
21 terms of the confidentiality of the underlying
22 records to put the exact tabulation there. So you

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1 have to introduce randomness, and what -- we
2 introduced that randomness through a swapping
3 system in 2010 and in 2000. We're replacing that
4 swapping system with a system that introduces the
5 randomness in a much more controlled way for 2020.
6 Such that, as you take those blocks -- even though
7 the block number is going to be noisy and we're
8 going to tell you how noisy it is -- when you add
9 them up to voting districts, the more people that
10 are in that voting district, the more accurate
11 estimate you get of all of the things you're
12 trying to tabulate. Not just citizenship,
13 race/ethnicity.

14 Q Just to clarify my understanding again,
15 my question wasn't about fitness of use. My
16 question was just about exact measurement.

17 And is it correct that after you received
18 the decennial enumeration questionnaire responses
19 and you tabulate CVAP data at the block level,
20 that the numbers that you produce for CVAP at
21 particular census blocks will not reflect the
22 exact actual values of the number of citizen of

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1 voting age at each of those census blocks?

2 A Could you read his question back to me?

3 (Thereupon, the reporter read the record

4 as requested.)

5 THE WITNESS: As read to me, that

6 statement is correct.

7 BY MR. HO:

8 Q Another way to put it is, after you

9 tabulate the CVAP data at the block level, those

10 CVAP numbers at the block level will have error

11 margins associated with them, right, Dr. Abowd?

12 A That's correct.

13 Q Now, in your previous deposition, I
14 remember reading that you discussed that there is
15 sometimes disagreement between a person's
16 citizenship status as reflected in the NUMIDENT
17 data and the person's response to the citizenship
18 question on the ACS; is that right?

19 A That's correct.

20 Q I want to show you a document. We'll
21 mark this as Exhibit 6.

22 (Plaintiffs' Exhibit 6, Email thread, was

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1 marked.)

2 BY MR. HO:

3 Q This is an email thread on which you
4 participated. Top email on the thread is from
5 J. David Brown to a number of individuals,
6 including you, dated January 3, 2018.

7 Do you see that?

8 A I see the header of the email, yes.

9 Q And this is an email that discusses,
10 among other things, the issue of disagreement
11 between the ACS responses and the NUMIDENT data
12 with respect to citizenship status.

13 Does that look right to you?

14 A Give me a second. I'm refreshing my
15 memory.

16 Q Sure.

17 A Yes. That's what the email says.

18 Q Mr. Brown, in his email to you, attaches
19 a paper -- if you look at attachments -- I don't
20 have the actual paper here -- but the attachments
21 line at the top of the email, Dr. Abowd.

22 A Okay.

1 Q Let me start that question again.

2 Mr. Brown apparently attached an email to
3 you from -- sorry -- apparently attached a
4 document to you, a paper by Van Hook and Bachmeier
5 from 2013 on the issue of disagreement between ACS
6 responses and the NUMIDENT data with respect to
7 citizenship status, correct?

8 MR. EHRLICH: Objection to form.

9 THE WITNESS: David Brown attached a
10 paper about aggregate-level comparisons of the
11 American Community Survey citizenship data with
12 aggregate summaries from other sources.

13 BY MR. HO:

14 Q That paper was written by two people,
15 Van Hook and Bachmeier -- B-A-C-H-M-E-I-E-R is
16 spelled -- correct?

17 A I don't have the paper in front of me.
18 There may have been other authors, but as far as I
19 know, that's correct.

20 Q Who are Van Hook and Bachmeier, do you
21 know?

22 A I do not know.

1 Q Do you know anything about their
2 reputation as political scientists or -- social
3 scientists? I'm sorry.

4 A I remember looking at the article and
5 noting where it was published, but I did not look
6 at the research activities of the authors.

7 Q Let me show you another document. We'll
8 mark this as Exhibit -- this is going to get a
9 little confusing now. I'm going to mark this as
10 Exhibit 7. This was Exhibit 6 in your previous
11 deposition. This was your January 19, 2018 memo.

12 (Plaintiffs' Exhibit 7, January 19, 2018
13 memo, was admitted into evidence.)

14 THE WITNESS: Yes, it is.

15 BY MR. HO:

16 Q Okay. I want to ask you about Page 7 of
17 the document, which is AR1282. You know, I'm
18 sorry, I think I have the wrong page number here.

19 It's Page 12 -- AR1283. It should be the
20 second paragraph after the Header C1, quality of
21 administrative record versus self-report
22 citizenship status.

1 A The paragraph that begins "For all of
2 these analyses"?

3 Q Yes.

4 A Okay.

5 Q Now, the second sentence here reads, "The
6 NUMIDENT data contained information on every
7 person who has ever been issued a Social Security
8 number or an individual taxpayer identification
9 number. Since 1972, SSA has required proof of
10 citizenship or legal resident alien status from
11 applicants. We use this verified citizenship
12 status as our administrative citizenship
13 variable."

14 I want to ask you about what you wrote
15 there. You described citizenship status in the
16 NUMIDENT data as verified, right, Dr. Abowd?

17 A Yes.

18 Q And you described citizenship status as
19 reported in the NUMIDENT as verified, because
20 everyone who obtains an SSN or an ITIN has had to
21 show a document concerning their citizenship or
22 legal noncitizenship status, correct?

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1 A Correct.

2 Q So if someone shows up in the NUMIDENT as
3 a noncitizen, just to put this in plain language,
4 that's because the Social Security Administration
5 records reflect that a document has been shown
6 identifying that person as a noncitizen, right?

7 MR. EHRLICH: Objection to form.

8 THE WITNESS: No. It's the citizenship
9 status that's been documented or if you add an
10 ITN, the eligibility for an ITIN.

11 BY MR. HO:

12 Q And the eligibility for an ITIN, if that
13 record in the NUMIDENT indicates that a person is
14 a noncitizen, it's because they've submitted a
15 document that indicates that they're a noncitizen,
16 right?

17 A Correct.

18 Q Now, in your view, if someone is
19 identified as a noncitizen in the NUMIDENT, that
20 reflects that person's current noncitizenship
21 status except for where there's a lag time between
22 when a noncitizen naturalizes and when the SSA

1 updates the person's record to reflect that change
2 in status, correct?

3 A Approximately correct. Not everyone is
4 obligated to notify SSA of a change in their
5 status. So the things you said, plus the
6 possibility that it never gets updated.

7 Q Generally speaking, you would agree that
8 if someone is denoted in the NUMIDENT as a
9 noncitizen, that that person is likely to be a
10 noncitizen, subject to a few exceptions?

11 A I won't agree with the last statement.
12 Subject to a few exceptions, we would intend to
13 quantify that, but subject to the exceptions in
14 whatever quantity they are.

15 Q Generally speaking, if someone is -- let
16 me just try this again.

17 Generally speaking, if someone is
18 identified in the NUMIDENT as a noncitizen, you
19 think it's reasonable to conclude that that person
20 is likely a noncitizen at present, correct,
21 Dr. Abowd?

22 A If the person is actually coded as a

1 noncitizen, then I believe it is reasonable that
2 they were issued an SSN with SSA believing that
3 they were not a citizen. If it's missing, that's
4 a different matter.

5 Q Now, if someone is identified through ACS
6 questionnaire as a noncitizen, that's based
7 exclusively on a survey self-response that is not
8 verified by an actual document regarding the
9 person's legal status, right?

10 A In the case of the respondent, that's
11 correct. In the case of the other members of the
12 household, it's based on the information provided
13 by the respondent about those other members of the
14 household.

15 Q So for anyone on the ACS who is
16 designated as a noncitizen, it's based on a survey
17 response, not an actual document about the
18 person's noncitizen status, correct?

19 A That's correct.

20 Q Let me show you another document. We can
21 mark this as Exhibit 8. It's another email thread
22 you're on. The top email is from Paul Beatty.

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1 (Plaintiffs' Exhibit 8, Email, was
2 marked.)

3 BY MR. HO:

4 Q It is from Paul Beatty to you, dated
5 January 2, 2018, and the Bates number of the first
6 page of this thread is AR6629.

7 Now, the third email in the chain is an
8 email that you write to -- it's on the first page,
9 Dr. Abowd. It on an email that you write to
10 Mr. Beatty and John Elting --

11 A Elting.

12 Q Elting, E-L-T-I-N-G-E [sic] -- dated
13 January 2, 2018, 9:35 a.m.

14 Do you see that email?

15 A Yes, I do.

16 Q Okay. You wrote, "I spent the entire
17 week of December 18 through 22 working on the
18 response to this for Ron. He sent it to DOJ on
19 Friday afternoon, December 22. We proposed adding
20 citizenship to the P.L. 94-171 to the
21 administrative records, not a new question on the
22 2020 census. This proposal had the backing of the

1 redistricting office."

2 You wrote that, right?

3 A Yes.

4 Q And the redistricting office is the
5 redistricting office at the Census Bureau run by
6 James Whitehorne, right?

7 A Yes.

8 Q Now, when you -- what do you mean when
9 you say that the option of using administrative
10 records to generate citizenship information for
11 the P.L. 94 file had the backing of the
12 redistricting?

13 A Okay. I was writing an email and I
14 didn't take my assistant director's advice as
15 seriously as I should have, to reread every
16 sentence before you click send. I meant that I
17 had discussed it with James Whitehorne. I meant
18 that we would produce a CVAP table in support of
19 P.L. 94-171.

20 Q Okay. Fair enough.

21 So you're referring to, in this email,
22 the production of a CVAP table with block-level

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1 CVAP data, right?

2 A Yes.

3 Q Okay. And when you say that that
4 proposal -- the proposal to generate that table
5 using administrative records had the backing of
6 the redistricting office led by Mr. Whitehorne,
7 what did you mean by that?

8 A It meant that I had previously discussed
9 with him whether this was a -- a tabulation that
10 we could make that would be considered politically
11 neutral and appropriate in support of state
12 redistricting efforts.

13 Q Was one of the reasons why the proposal
14 to use administrative records to generate
15 block-level CVAP data have the support of the
16 redistricting office, the fact that administrative
17 records are based on verified information about a
18 person's citizenship status instead of a
19 self-report on a survey?

20 A Not precisely. What it was based on was
21 our ability to produce fit-for-use statistics that
22 we could document the quality of. The fact that

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1 citizenship status is verified, at least for
2 people since 1972 in the NUMIDENT, is evidence
3 that the quality of the administrative record has
4 already received some scrutiny.

5 Q So you would agree with the statement
6 that you -- I'm sorry. Let me just -- let
7 me -- start that question again.

8 You described citizenship data from the
9 NUMIDENT as verified, because it's based on the
10 receipt of an actual legal document; is that
11 right, Dr. Abowd?

12 A Yes.

13 Q Okay. And you would describe responses
14 to a citizenship question as unverified, right,
15 Dr. Abowd?

16 A Yes.

17 Q Let me show you another email. We'll
18 mark this as Exhibit 9.

19 (Plaintiffs' Exhibit 9, Email, was
20 marked.)

21 BY MR. HO:

22 Q This is an email from Ron Jarmin to a

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1 number of people, including you, dated
2 December 22, 2017. That's the top email in the
3 thread anyway. The document is AR6659.

4 So in the top email, Dr. Jarmin is
5 forwarding to you and Albert Fontenot?

6 A Fontenot.

7 Q Fontenot. An email --

8 A It's French. Don't say the T at the end.

9 Q Thank you.

10 Dr. Jarmin is forwarding an email to you
11 that he previously sent to -- it's redacted, but
12 it's addressed to someone named Arthur, and it's
13 cc'd to Enrique Lamas; is that right?

14 A That's correct.

15 Q In -- now, you understand -- do
16 you -- the Arthur referred to by Dr. Jarmin in
17 this email -- or sorry. Let me start that again.

18 The Arthur to whom this email is
19 addressed, does that appear to you to be
20 Arthur Gary from the Department of Justice?

21 A Well, I understand it to be someone in
22 the Department of Justice, but I don't know any of

1 them. So I don't know the last name.

2 Q Do you understand -- okay. I'm sorry.

3 The first sentence is, "Thank you for
4 your letter dated 12/12/2017 regarding improving
5 the quality of citizenship information for DOJ
6 enforcement of the Voting Rights Act."

7 When Dr. Jarmin wrote that, do you
8 understand that to be a reference to the DOJ's
9 request to add a citizenship question to the
10 census?

11 A Yes.

12 Q And would this email -- you understand
13 Dr. Jarmin to be forwarding a description of the
14 analysis that you were working on described in
15 your email to Mr. Beatty, the exhibit that we just
16 discussed previously, Exhibit 8?

17 A Yes.

18 Q The third sentence down in Mr. Jarmin's
19 email to Arthur starts with the phrase, "They have
20 now briefed me."

21 Do you see that?

22 A Yes.

1 Q Okay. Mr. -- Dr. Jarmin writes, "They
2 have now briefed me, and their findings suggest
3 that the best way to provide P.L. 94 block-level
4 data with Citizen Voting Age Population by Race
5 and Ethnicity would be through utilizing a linked
6 file of administrative and survey data the
7 Census Bureau already possesses."

8 When Dr. Jarmin refers to a linked file
9 of administrative and survey data, that's a
10 reference to what you were describing earlier in
11 your email to Mr. Beatty about adding citizenship
12 or -- creating a citizenship table via
13 administrative records, correct?

14 A Yes. That's a shorthand way of
15 expressing that.

16 Q And when Dr. Jarmin writes using this
17 administrative record would result in higher
18 quality data, do you understand that to be a
19 reference, in part, to the fact that information
20 about citizenship status in the administrative
21 record is based, in part, on legal documents about
22 a person's citizenship status as opposed to a

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1 survey report?

2 MR. EHRLICH: Objection. The document
3 says administrative and survey data in the
4 Census Bureau.

5 BY MR. HO:

6 Q You can answer the question.

7 A So I understand him to be summarizing the
8 knowledge that we had after about a week and a
9 half of studying these linked files about the
10 disagreement between survey responses and
11 administrative citizenship data.

12 Q So you'd agree that if there's
13 disagreement between survey responses and
14 administrative -- excuse me. Strike that. Let me
15 start that again.

16 You would agree if there's a disagreement
17 between survey responses and administrative data
18 about a person's citizenship status, that usually
19 you'd assume that the verified administrative
20 records are correct and that the reported survey
21 response is incorrect, right, Dr. Abowd?

22 MR. EHRLICH: Objection. Form.

1 THE WITNESS: No. It's not as simple as
2 that. If you were certain that the person you had
3 the survey response from and the person you had
4 the administrative record from were the same, and
5 you had a valid statistical sample of such people,
6 then you could estimate the error rates in both
7 the agreement and disagreement cells. We were at
8 that time -- and we still are -- hypothesizing
9 that when the citizenship variables disagree for a
10 citizen, that that error rate is relatively low.
11 And that when they disagree for noncitizens, that
12 error rate is relatively high. That would be one
13 of the hypotheses that we would attempt to verify
14 before asserting that the administrative data
15 should replace the survey response. Otherwise, we
16 would use them in combination.

17 BY MR. HO:

18 Q Okay. I understand that there are some
19 errors associated with trying to determine a
20 person's citizenship status based on the
21 administrative record. We talked about one early,
22 which was that a person's citizenship status may

1 change. That's not yet reflected in the
2 administrative record. That's one source of
3 error, when you try to ascertain someone's
4 citizenship status from the administrative record,
5 right, Dr. Abowd?

6 A Correct.

7 Q Another source of error is if you have a
8 problem in the linking of records, the person that
9 you're wanting to know the citizenship status of
10 might not be the same person that you're looking
11 at the administrative record of, right, Dr. Abowd?

12 A That's correct.

13 Q Do you have confidence in the
14 Census Bureau's matching procedures when you're
15 trying to ascertain whether or not a particular
16 Census Bureau survey respondent is, in fact, the
17 same person in the administrative NUMIDENT data?

18 A When the quality of the
19 personally-identifiable information on both the
20 survey response and the administrative record are
21 sufficiently high, yes. And as the quality of
22 either of those two sources of PII deteriorates,

1 then increasingly, no, to the point where you
2 can't link, at all.

3 Q You described earlier there was a -- the
4 hypothesis that if there's disagreement between
5 the administrative record and a person's
6 self-response, that it's -- that you could
7 hypothesize that the administrative record is more
8 likely to reflect the person's citizenship status
9 than the survey self-response; is that correct,
10 Dr. Abowd? Do I understand you correctly?

11 A In the hypothetical I posed where the
12 linkage was not an issue, yes.

13 Q When the Census Bureau links survey
14 respondents to the administrative data and there's
15 disagreement between the survey response and the
16 administrative data, do you think it's a
17 reasonable hypothesis that the administrative data
18 about a person's citizenship status is more likely
19 to be reliable than the survey response?

20 MR. EHRLICH: Objection. Form.

21 THE WITNESS: When the linkage is high
22 quality, yes.

1 BY MR. HO:

2 Q Is the linkage performed by the
3 Census Bureau between ACS survey respondents and
4 the NUMIDENT data what you would describe as high
5 quality?

6 A Sometimes, yes, and sometimes, no.
7 Generally, yes.

8 Q For purposes of the analysis that you
9 conducted referenced in your January 19th memo,
10 was the linkage between the ACS respondents and
11 the NUMIDENT data about citizenship status, was
12 that a high-quality match?

13 A So the average statistic for that match
14 was that it was a high-quality match, but not all
15 of the records matched with high quality.

16 Q Okay.

17 A And some didn't match, at all.

18 Q Generally speaking, when there was
19 disagreement -- in the analysis that you performed
20 in your January 19th memo between the
21 administrative record and a person's survey
22 response about citizenship data, is it reasonable

1 to conclude that the administrative record is more
2 likely to be correct about the person's
3 citizenship status than the response to the ACS
4 question?

5 A When the administrative record says you
6 are a citizenship and when the linkage of high
7 quality, as it generally is for people whom the
8 administrative record says you're a citizen, then,
9 yes. When the administrative record says that
10 you're not a citizen and the linkage is of high
11 quality, then subject to the caveats I have
12 already expressed, I would also say yes. But as
13 the linkage quality deteriorates, then you're not
14 sure you're looking at the same person and you're
15 also not confident of the -- either the survey
16 responses or the administrative record.

17 Q So let's just talk about the
18 noncitizens --

19 A Okay.

20 Q -- in the NUMIDENT data. When you have a
21 non- -- someone who is identified as a noncitizen
22 in the NUMIDENT data and you link that person to

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1 an ACS response and there's disagreement, that is,
 2 the person who is identified in the NUMIDENT as a
 3 noncitizen, but their ACS response is citizen,
 4 when you conducted that analysis for purposes of
 5 your January 19th memo, do you have confidence
 6 that person is likely a citizen -- sorry -- likely
 7 a noncitizen and that the response to the ACS
 8 question was incorrect?

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Vague;
 Compound;
 Confusing

9 MR. EHRLICH: Objection. Form.

10 THE WITNESS: We believe that the most
 11 likely conclusion is that the administrative
 12 record is correct and the survey response is not.

13 BY MR. HO:

14 Q And I believe in your January memo, you
 15 conclude that about 30 percent of ACS respondents
 16 who are identified as noncitizens in the NUMIDENT,
 17 respond to the ACS citizen question by stating
 18 they are citizens, right, Dr. Abowd?

19 A We agreed to use 30 percent as the
 20 summary for a range, but yes, I think that's a
 21 representative statistic.

22 Q So based on your previous responses

1 today, you think it's likely that 30 percent of
2 noncitizens who responded to the ACS citizenship
3 question responded incorrectly about their
4 citizenship status to the ACS question, right,
5 Dr. Abowd?

6 A I -- the correct statement is that the
7 data provided for 30 percent of the survey
8 respondents who indicated citizens, that wasn't
9 necessarily provided by that person -- that's what
10 I'm trying to correct -- is likely incorrect, yes.

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11 Q Do you have any empirical basis to expect
12 that noncitizens who respond to a citizenship
13 question on the 2020 decennial enumeration
14 questionnaire will respond more accurately than
15 noncitizens who have responded to the citizenship
16 question on the ACS?

17 A No.

18 Q Is there any reason to think that
19 noncitizens who respond to the citizenship
20 question on the 2020 enumeration will respond less
21 accurately than noncitizens who respond to the
22 citizenship question on the ACS?

1 A We have identified an upward trend in the
2 disagreement between the survey responses and the
3 administrative record. It's not precise enough
4 for us to label as a definitive upward trend, but
5 it -- there are definitely indications in the data
6 that the willingness to respond accurately to that
7 question is declining.

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8 Q Would you expect noncitizens responding
9 to the citizenship question on the 2020 decennial
10 enumeration questionnaire to respond inaccurately
11 at a higher rate than the inaccuracies you
12 documented among noncitizens responding to the
13 citizenship question on the ACS?

14 A I don't have a well-formed opinion on
15 that. I have told you that there's a -- the
16 appearance of a trend that we have not determined
17 has the statistical quality to say is a trend, but
18 is -- so in the absence of that, I would have to
19 say my expectation is the same as the most recent
20 data, which would be the 2016 ACS. That's where
21 the 30 percent number comes from.

22 Q For producing the block-level CVAP data,

1 there are, at present, no plans in place to
2 address situations where a person's self-report in
3 response to the citizenship question on the 2020
4 enumeration questionnaire disagrees with that
5 person's citizenship status as noted in the
6 NUMIDENT data file; is that right, Dr. Abowd?

7 THE WITNESS: I'm sorry. Could you read
8 the first part of his question back to me?

9 (Thereupon, the reporter read the record
10 as requested.)

11 THE WITNESS: I think you're asking me
12 about the processing decisions for the 2020 census
13 and the subsequent production decisions for the
14 CVAP tabulation; is that right?

15 BY MR. HO:

16 Q Right.

17 A There are no current decisions about how
18 that's going to be done.

19 Q There are no current decisions about how
20 you're going to reconcile differences between the
21 responses to the citizenship question and a
22 person's citizenship status as defined in the

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1 NUMIDENT?

2 A That's correct.

3 Q The last sentence of Exhibit 9,
4 Dr. Jarmin's email says, "I suggest we schedule a
5 meeting of Census and DOJ technical experts to
6 discuss the details of this proposal."

7 That meeting did not take place, did it,
8 Dr. Abowd?

9 A That's correct.

10 Q You anticipated having such a meeting in
11 January of 2018, right?

12 A I wouldn't say that the Census Bureau
13 anticipated having such a meeting. I would say
14 that we offered DOJ the opportunity to meet with
15 us and hoped that they would.

16 Q I'm going to show you a document. We'll
17 mark it as 10.

18 (Plaintiffs' Exhibit 10, Email, was
19 marked.)

20 BY MR. HO:

21 Q This is an email thread, the top email is
22 from Misty Heggeness to you dated January 2, 2018

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1 with Bates number AR6623. The second email on the
2 thread, you write on January 2, 2018 at 1:16 p.m.,
3 "Don't worry about missing the DOJ follow-up
4 meeting. I don't expect many technical questions.
5 It's mostly about messaging."

6 You wrote that, right?

7 A I did, yes.

8 Q Misty Heggeness is the senior advisor for
9 evaluations and experiment at the Census Bureau,
10 right?

11 A Yes, she is.

12 Q Why did you tell her not to worry about
13 missing the DOJ follow-up meeting?

14 A So I believe what's going on in this
15 email, I'm using a very shortened sentence for the
16 response to the DOJ request follow-up meeting.

17 Q Okay.

18 A We never had a DOJ meeting scheduled.
19 I'm sure I'm referring to shorthand of we're
20 working on a technical response to the DOJ's
21 request and there were follow-up meetings from
22 that.

1 Q When you say the meeting would be mostly
2 about messaging, what did you mean by that?

3 A To be honest, I'm not sure. I believe
4 that on the 2nd of January, we were discussing the
5 wording of a short summary memorandum that I was
6 working on for the acting director, summarizing
7 the state of the research through the end of
8 December.

9 Q You testified a moment ago that DOJ
10 declined to take the meeting that was referenced
11 in Dr. Abowd -- Dr. Jarmin's email; is that right?

12 A That's correct.

13 Q Do you know why?

14 A I believe it's in the administrative
15 record, the reply to this email. I'll summarize.
16 Again, if you say this is the author of the
17 letter, I believe you, but names haven't stuck.

18 Said that the basis for our request is
19 adequately documented in the letter and we decline
20 to further meet.

21 Q In your experience, is it unusual to
22 receive a data request from an agency to the

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1 Census Bureau and then for the agency to refuse to
2 meet to discuss the technical aspect of that data
3 request?

4 A My experience in my current position is
5 only two years old. I will answer on behalf of
6 the agency. Yes.

7 MR. HO: We've been going for about an
8 hour 50, 55 or so. Would now be an okay time for
9 a bathroom break?

10 MR. EHRLICH: It's okay with me.

11 VIDEOGRAPHER: This concludes Media Unit
12 Number 1. The time on the video is 10:55 a.m. We
13 are off the record.

14 (Off the record.)

15 VIDEOGRAPHER: This begins Media Unit
16 Number 2. The time on the video is 11:19 a.m. We
17 are on the record.

18 MR. EHRLICH: Just to clarify something
19 we were discussing earlier on the record when we
20 were talking about you had received documents
21 yesterday evening that you wanted to talk to
22 Dr. Abowd about. We wanted to clarify that you

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1 get seven hours for the 30(b)(6). If you want to
2 reserve time at the end of today in order to
3 review those documents and ask him more questions,
4 we can produce him again for you.

5 MR. HO: Thanks for that offer. I'll
6 confer with co-counsel and counsel for the other
7 plaintiffs --

8 MR. EHRLICH: Okay.

9 MR. HO: -- and we'll talk.

10 MR. EHRLICH: Thank you.

11 BY MR. HO:

12 Q Dr. Abowd, before moving on to another
13 topic, I just want to ask a few questions about
14 some things we discussed earlier.

15 You testified that when the
16 Census Bureau, after the 2020 decennial census,
17 produces the block-level CVAP data, that there
18 will be error margins associated with that
19 block-level CVAP data. Do you remember that?

20 A Yes.

21 Q Okay. Today, does the Census Bureau know
22 whether or not the error margins associated with

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1 that block-level CVAP data will be larger or
2 smaller than the error margins associated with the
3 block-level CVAP data that DOJ currently uses,
4 based on ACS estimates?

5 A I have to give a nuanced answer to that
6 question. We don't know, because we haven't set
7 the parameters of the disclosure avoidance system
8 yet. That's somewhat new territory for my
9 colleagues, and I am certain that one of the
10 things we will be discussing is whether the error
11 margins associated with both the P.L. 94 and the
12 CVAP table at the block level still allow
13 redistricting offices and the
14 Department of Justice to use the data effectively.
15 That is the use case for those data.

16 Q Would you agree -- never mind. That's
17 fine.

18 You testified a little bit about a
19 possible RCT of the citizenship question and
20 request from, I believe it was Enrique Lamas, to
21 get a proposal for doing an RCT of the citizenship
22 question without the prefatory nativity question

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1 that's been used in past questionnaires.

2 Did I get that right?

3 A Everything you just said is what I said,
4 I think, yes.

5 Q Okay. And that was in March of 2018?

6 A May.

7 Q May of 2018.

8 And are there documents to reflect the
9 request from Mr. Lamas to conduct an RCT of the
10 citizenship question without a prefatory question
11 without nativity?

12 A First of all, he didn't request an RCT.
13 He requested a proposal for an RCT.

14 Q Thank you.

15 A And I have seen Victoria Velkoff's
16 response to that request. So there are artifacts,
17 yes.

18 Q Was that request, or Ms. Velkoff's
19 response, were those in emails?

20 A I do not know how the correspondence
21 between Enrique and Tori Velkoff was conducted.
22 But there is a document that is the proposal of

1 American Community -- ACS office produced, and
2 that was transmitted to me by email.

3 Q And when you say there was a document
4 produced, was that like a memorandum attached to
5 an email or was it in the text of an email?

6 A It was a separate document, short summary
7 of the proposal. I think it was all of the
8 proposal, but it was short.

9 Q As set forth in that proposal, how long
10 would the RCT have taken?

11 A I did read it very recently, but I did
12 not memorize it. The way it works in the
13 experimental components of the American Community
14 Survey is you designate certain months in the
15 field for data collection. And then the
16 American Community Survey data are processed in a
17 flow, but we don't release the official products
18 until the flow of an entire year has been
19 processed, but we would have been able to evaluate
20 an experiment as soon as the months that were in
21 the experiment were evaluated.

22 She gave two separate start dates for the

1 experiment. One was November and one was early in
2 2019. But I don't remember her saying how many
3 months it had to run to achieve the standard
4 errors that -- that it was designed to produce, so
5 that's -- it may not have been in there.

6 Q Do you know how expensive either of those
7 proposals to conduct an RCT of the citizenship
8 question would have been?

9 A Would you remember to re-ask that
10 question after the next break? I would rather
11 give you exactly the right answer than the two
12 numbers I remember, and I think I have transposed
13 digits in one of them, so I'm just going to go
14 look.

15 Q I appreciate that. And if it's not me,
16 then it might be somebody else.

17 A Right. As long as someone knows to
18 re-ask, I know my counsel will remind me to check.

19 Q Was that RCT proposal discussed with
20 anyone outside of the Census Bureau?

21 A When I discussed that RCT proposal with
22 the acting deputy director, he took

1 responsibility, in conjunction with the acting
2 director, for giving me the no-go, but he didn't
3 tell me whether he discussed with anyone else
4 outside the Bureau.

5 Q So you're aware that Dr. Jarmin and -- I
6 don't know if it's Dr. or Mr. Lamas?

7 A It's doctor. It's Dr. Velkoff, too.

8 Q Okay. You don't know if anyone other
9 than Dr. Jarmin and Dr. Lamas were involved in
10 this -- the decision not to do the RCT of the
11 citizenship question?

12 A I do not know.

13 Q You testified at one point whether or
14 not -- excuse me -- you testified at one point
15 that there are indicators in that -- let me try
16 again.

17 I think you testified earlier that there
18 are indicators suggesting that nonresponse rates
19 to a citizenship question among noncitizens are
20 increasing; is that right?

21 A Yes.

22 Q What are those indicators that you were

1 referring to?

2 A In our technical research, we've
3 conducted statistical experiments that attempt to
4 estimate the extent to which certain categories of
5 households that either include a noncitizen or
6 include someone for whom we don't know the
7 citizenship status might not respond to
8 questionnaires that include a citizenship
9 question. In the analysis for the 2000 census,
10 that number was around 3 percentage points. In
11 the analysis circa 2010, it was closer to 5
12 point -- 5 percentage points. And the most recent
13 analyses we have produced, it's closer to five and
14 a half percent -- 5.8 percentage points and
15 applies to a bigger subpopulation of households
16 than our previous analyses.

17 Q Any other analyses suggesting that there
18 are indications of greater nonresponse over time
19 from noncitizens to a citizenship question other
20 than the ones you've just described?

21 A If you look at the item nonresponse rates
22 and the break-off rates, the reason I said that

1 they didn't meet statistical standards for saying
2 we think there's a trend is because they're short
3 and there have been some procedural changes that
4 materially affect the year-to-year comparisons,
5 but they are higher now than they were earlier in
6 the decade.

7 Q So we have increasing unit nonresponse,
8 increasing item nonresponse and increasing
9 break-off rates, all suggesting that noncitizens'
10 sensitivity to a citizenship question have been
11 increasing over time; is that right, Dr. Abowd?

12 A You have to permit the caveat that I
13 didn't say increasing. I said they're going up,
14 but that, specifically, I don't have sufficient
15 statistical evidence to conclude there's an
16 increase in trend.

17 In the case of the -- of the item
18 nonresponse rates, it's because of the change in
19 design that occurred in 2013. In the case of the
20 break-off rates, it's because we haven't been able
21 to analyze full 2017 data, and we only had 2016
22 data. So we don't -- I don't, really, even have

1 two points for the break-off rates.

2 But at the time we prepared our technical
3 report for the Secretary, we had the 2000 and the
4 2010, and those two numbers are statistically
5 different from each other, and the one in 2010 is
6 larger.

7 Q But you would agree that the item
8 nonresponse and the break-off rate analysis that
9 you've done, they're both consistent with the
10 notion that noncitizens' sensitivity to a
11 citizenship question and unwillingness to respond
12 to such a question, have increased over time?

13 MR. EHRLICH: Objection. Form. Vague;
Compound

14 THE WITNESS: I will agree to the
15 statement, consistent with the -- with the
16 increase over time, yes.

17 BY MR. HO:

18 Q Other than the three things we've
19 discussed, unit nonresponse, item nonresponse and
20 break-off rates, are there any other indicators
21 suggesting that noncitizens' sensitivity to a
22 citizenship question has been increasing over

1 time?

2 A There are survey indicators from the
3 Census Barriers, Attitudes and Motivators Survey
4 and qualitative analysis from focus groups that
5 also suggest it.

6 Q Other than the CBAMS and the focus
7 groups, any other indicators that you're aware of
8 suggesting that noncitizens sensitive to a
9 citizenship question has been increasing?

10 A None that I can recall at this moment.

11 Q Okay. You said something about the 5.8
12 percentage point reduction in response rates among
13 noncitizens to a citizenship question -- because
14 of the presence of a citizenship question; is that
15 right, Dr. Abowd?

16 A I can restate the question so it's right.

17 Q Please.

18 A We did analyses -- we did analyses that
19 compared different categories of households that
20 included citizens with categories of households
21 that either didn't or may not include citizens.
22 And the most reset of them -- which is in the

1 technical paper that was delivered to you last
2 night -- uses an estimate of 5.8 percentage
3 points.

4 Q Right. That 5.8 percentage point
5 estimate, that's not reflected in your
6 January 19th memo from earlier this year, right?

7 A That's correct.

8 Q But it is reflected in the updated white
9 paper dated August 6, 2018 that plaintiffs'
10 counsel received after the close of business last
11 night, right, Dr. Abowd?

12 A Well, I don't know when you received it,
13 but that is the correct document, yes.

14 Q Are you aware of any reason why that
15 document couldn't have been produced to
16 plaintiffs' counsel before last night?

17 A That document had been produced in
18 substantially the same form three weeks ago.

19 Q When you say produced in substantially
20 the same form, to whom do you mean?

21 A There's a version dated July and a
22 version dated August, both of which were provided

1 to the Department of Commerce in response to a
2 discovery request we were processing.

3 Q Do you know when the August 6th version
4 of that paper was produced from the Census Bureau
5 to the Department of Commerce?

6 A I do not.

7 Q Was it yesterday?

8 A I don't think so -- no. It definitely
9 wasn't yesterday. It -- because I asked for a
10 copy at the Department of Commerce on Monday, and
11 I was given a copy with the August 6th date. I
12 was expecting to see a copy with a July date.
13 There's no difference between them, other than
14 some grammar mistakes that have been corrected.

15 Q I want to show you a document that you
16 talked about at your last deposition. This was a
17 short version, I think, of the analysis we were
18 just talking about. It was the first Abowd
19 Deposition Exhibit 4, marking it as Exhibit 11 for
20 this deposition.

21 (Plaintiffs' Exhibit 11, Analysis, was
22 marked.)

1 BY MR. HO:

2 Q I want to turn to Page 7 of this
3 document, Bates number 5506, and I want to ask you
4 about Table 5 and the description of Table 5.
5 Take a look at it, and let me know when you're
6 ready to talk about it.

7 Oh, I'm sorry. I said the wrong table.
8 I meant Table 6, and the paragraph right above
9 Table 6, which I believe describes Table 6.

10 A Okay.

11 Q The analysis depicted in Table 6 is a
12 longitudinal analysis, right, Dr. Abowd?

13 A That's correct.

14 Q And that means it's an analysis of data
15 that was gathered from the same subjects
16 repeatedly over a period of time, right,
17 Dr. Abowd?

18 A Same subject households, yes.

19 Q So just to put it in plain English, a
20 longitudinal survey is, basically, a survey that
21 is administered periodically to the same
22 households in this case, right?

1 A In this case, yes. That's right.

2 Q Now, the first sentence in the paragraph
3 above Table 6 reads: Other proxy measures for
4 understanding response sensitivity to questions of
5 citizenship can be examined with longitudinal
6 data.

7 What does that sentence mean?

8 A It's a -- it's terse technical writing
9 for it, and now we're going to do things similar
10 to what we just did for cross-sectional studies
11 with some longitudinal data.

12 Q And the premise here is that a
13 longitudinal analysis could shed some light on the
14 sensitivity of citizen- -- or the question on
15 citizenship, right, Dr. Abowd?

16 A Yes.

17 Q The SIPP, S-I-P-P, that's a longitudinal
18 survey featuring a citizenship question, correct?

19 A That's correct. It's the Survey of
20 Income and Program Participation.

21 Q And who is it conducted by?

22 A The Census Bureau.

1 Q According to the table, in Wave 1 of the
2 SIPP, noncitizens were 6.1 of respondents but by
3 Wave 2, they were only 5.7 percent of SIPP
4 respondents, correct?

5 A That's correct.

6 Q So just to explain what that means,
7 noncitizens shrank as a share of respondents to
8 this longitudinal survey because they dropped out
9 of responding to the survey at a higher rate than
10 did citizens, correct, Dr. Abowd?

11 A So the two point estimates, 6.1
12 percentage point and 5.7 percentage point -- the
13 5.7 is less than the 6.1. I think I asked the
14 authors to ensure that the standard error of the
15 difference was -- which is negative -- was also
16 sufficiently precise. On the hypothesis that
17 that's the case -- I don't have the standard or
18 the difference here -- then, yes, that's the
19 correct conclusion.

20 Q So the idea that the white paper's
21 authors are operating under here is that if
22 noncitizens dropped out of a longitudinal survey

1 featuring a citizenship question at a higher rate
2 than did citizens, then that suggests that
3 noncitizens are more sensitive to a citizenship
4 question and might fail to respond to a survey
5 with a citizenship question at a higher rate than
6 citizens; is that right?

7 A So the nuanced answer to your question is
8 that it is suggestive of that. In these kinds of
9 survey situations, we can't design the gold
10 standard randomized controlled trial for which the
11 precise hypothesis that you stated would be the
12 one you could precisely test. So the
13 questionnaire does include a citizenship question.
14 It includes lots of other questions, as well. And
15 subject to that caveat, the conclusions that you
16 drew about the difference between Wave 1 and
17 Wave 2 participation -- sorry, response rates --
18 is correct.

19 BY MR. HO:

20 Q And the Census Bureau agrees with the
21 authors of the white paper that this longitudinal
22 analysis is suggestive of the notion that

1 noncitizens are more sensitive to a question about
2 citizenship and less likely to respond to a survey
3 featuring a citizenship question, correct?

4 MR. EHRLICH: Objection. Form. Vague;
Compound

5 THE WITNESS: The Census Bureau considers
6 the evidence from the SIPP to be consistent with
7 the other evidence that we have examined
8 suggesting that households that either contain a
9 noncitizen or contain at least one person for whom
10 we do not know the citizenship status are more
11 sensitive to questionnaires that include questions
12 about citizenship status.

13 BY MR. HO:

14 Q There are other longitudinal studies
15 conducted by the Census Bureau featuring a
16 question on citizenship, right, Dr. Abowd?

17 A Yes.

18 Q For example, the Current Population
19 Survey, CPS, is a longitudinal survey conducted by
20 the Census Bureau featuring a citizenship
21 question, correct?

22 A So that's not technically correct. The

1 current population's survey frame is only
2 longitudinal in the sense of the selected housing
3 units, not in the sense of the selected persons
4 who are in those housing units. So the
5 interviewer's instructions are to go back to the
6 same physical address, and whoever is living there
7 gets interviewed.

8 Q So it's fair to say, though, that it's
9 longitudinal survey of the same household's units
10 and that it -- correct?

11 A Housing, not household.

12 Q Okay.

13 A That's precisely what I'm trying to
14 correct.

15 Q Got it.

16 So the CPS features a citizenship
17 question, correct?

18 A Yes.

19 Q And it's a longitudinal survey of the
20 same housing units, correct?

21 A The survey is longitudinal. The
22 citizenship question isn't.

1 Q The citizenship question does get asked
2 periodically in the CPS, correct?

3 A I'm going to take the opportunity to
4 correct something from my --

5 Q Uh-huh.

6 A -- testimony earlier where I was showing
7 my age.

8 Early in my career, I used the CPS a lot,
9 and early in my career, the citizenship status
10 question only appeared on supplements. They were
11 called the immigrant supplement. Beginning in
12 1994, the question is asked every month, but is
13 only asked of a respondent once. And so the next
14 time the interviewer goes to that household -- we
15 call it dependent surveying -- if the survey form
16 indicates that you're talking to the same person
17 who answered before, then a number of questions,
18 including the citizenship question, aren't asked
19 again. So it's not longitudinal on the
20 citizenship question in the same way that the SIPP
21 in the era being examined here would be
22 longitudinal.

1 Q Just so I understand correctly, if
2 someone responds to the CPS, the first time, they
3 get a citizenship question, correct?

4 A So the CPS, like the American Community
5 Survey, accepts the responses for every member of
6 the household from a single respondent.

7 Q Uh-huh.

8 A And so if -- if the -- and they're
9 categorized by numbers that refer to the -- to the
10 respondent. If the next time that housing unit is
11 in the sample, the same family, technically
12 household, and members are there, then the
13 question is not supposed to be asked about someone
14 for whom the survey already has the data.

15 Q So the household receiving the CPS survey
16 questionnaire is absent any change to the
17 composition of the household only supposed
18 to be -- ask the citizenship question once?

19 A Month and Sample 1 -- and I didn't review
20 the field procedures for what happens if Month and
21 Sample 2 through 8 enumerator -- the interviewer
22 finds a different household there. But Month and

1 Sample 1 is when you're supposed to be asked the
2 nativity question and citizenship.

3 Q And you're not supposed to be asked the
4 citizenship question again on a subsequent CPS
5 survey unless the composition of your household
6 changes?

7 A That's my understanding from the summary
8 of the field instructions, yes.

9 Q If we looked at the CPS in a way that was
10 similar to the analysis in this white paper of the
11 SIPP, and we compared the rates at which different
12 subgroups dropped out of the CPS survey, say
13 racial or ethnic minorities or noncitizens, for
14 example, and compared that to the rate at which
15 other subgroups dropped out of the CPS, would that
16 be suggestive of sensitivities to survey with a
17 citizenship question in a manner similar to the
18 dropout analysis of the SIPP respondents in the
19 white paper?

20 MR. EHRLICH: Objection. Form.

21 THE WITNESS: You can't do an analysis of
22 the CPS data that is strictly comparable to the

1 analysis that's done in Table 6 here. So there is
2 no way in which I can say if -- I don't know how
3 to interpret if you did something similar here.
4 If you show me an analysis that was actually done
5 on the CPS data, I could understand where the
6 components came from and I might be able, at that
7 point, to assist in interpreting those numbers.

8 BY MR. HO:

9 Q Okay. Let's -- I'm not asking about
10 something exactly comparable to the SIPP analysis
11 here, but if I took a group of CPS respondents at
12 Time 1, and then I looked at the same group of CPS
13 respondents at Time 2, and I noticed, for example,
14 that noncitizens dropped out of the CPS at a
15 higher rate than did citizens -- so similar to the
16 SIPP analysis here -- would that be suggestive of
17 the notion that noncitizens are more sensitive to
18 a survey question about citizenship?

19 MR. EHRLICH: Objection. Form.

20 THE WITNESS: As you have stated the
21 question, you're, again, doing something that you
22 can't do with the Current Population Survey, so I

1 don't know how to answer your question.

2 A housing unit doesn't drop out of the
3 Current Population Survey, though it could be
4 destroyed, in which case there would be a field
5 report that the housing unit doesn't exist
6 anymore.

7 BY MR. HO:

8 Q But a housing unit can have -- can refuse
9 to respond to the CPS, correct?

10 A That's correct.

11 Q So forget that I said drop out. Let's
12 just talk about refusal to respond.

13 If I look at Time 1 and I compare
14 response rates to the CPS, and I look at Time 2
15 and I look at refusals to respond, right, and I
16 see that noncitizens or noncitizen households
17 refuse to respond to the CPS at Time 2 at a higher
18 rate than did citizen households, would that be
19 suggestive of the idea that noncitizens are more
20 sensitive to a citizenship question than --

21 A You can't do that experiment either.

22 Q Okay.

1 A It's a housing unit --

2 Q I think I understand.

3 A You don't know who is in the housing unit
4 when you go the second month and second sample.
5 That's the point I'm trying to make.

6 Q I think I understand.

7 A Okay.

8 Q All right. Let me try this again.

9 Time 1, right, we have a group of CPS
10 respondents. Some housing units have a
11 noncitizen, some housing units do not have a
12 noncitizen. Time 2, the share of respondents to
13 the CPS from the housing units that at Time 1 had
14 a noncitizen has shrunk. Would that be suggestive
15 of the notion that noncitizens are more sensitive
16 to a citizenship question than are U.S. citizens?

17 MR. EHRLICH: Objection. Form. Vague; confusing

18 THE WITNESS: Replace Time 1 and Time 2
19 with Month and Sample 1 and Month and Sample 2.
20 If you look at statistics for Month and Sample 2
21 for households for Month and Sample 1 that
22 identified as citizen versus for households for

1 Month and Sample 1 that identified as noncitizen
2 and you found differences in the Month and
3 Sample 2 statistics, that would be as similar as
4 you could construct to the hypothetical in Table 6
5 of the working paper we're talking about.

6 BY MR. HO:

7 Q And would that analysis -- if I showed
8 that Month and Sample 1 housing units that
9 featured a noncitizen responded at a lower rate at
10 Month and Sample 2 than the households that at
11 Month and Sample 1 were all citizen households,
12 would that be suggestive of greater sensitivity of
13 noncitizens to a citizenship survey question?

14 MR. EHRLICH: Objection. Form. Vague; Confusing

15 THE WITNESS: That would have an
16 interpretation similar to Table 6 in the working
17 paper, yes.

18 BY MR. HO:

19 Q Now, during your last deposition, do you
20 remember talking about the acronym C-A-P-I or
21 CAPI?

22 A Computer-assisted personal interview,

1 yes.

2 (Conference call interruption.)

3 BY MR. HO:

4 Q CAPI is, basically, a nonresponse
5 follow-up for the ACS; is that right?

6 A As of right now, that is correct.

7 Q Okay. And what --

8 A That is the field technical technique
9 used for nonresponse follow-up in the ACS.

10 Q Okay. And what it means is you send,
11 basically, a census employee out with some kind of
12 personal handheld computer device to try to get an
13 answer to the ACS from a household that didn't
14 respond; is that right?

15 A That's correct.

16 Q Okay. Now, the SWAT team that did the
17 white paper that we talked about earlier,
18 conducted a stratified analysis of the CAPI
19 response rates breaking census tracts into deciles
20 from those with the -- the lowest percentage of
21 household with the noncitizen to those with the
22 most; is that right?

1 A If you're going to ask me about one of
2 the analyses that's in this early draft, I need to
3 know which one.

4 Q Sure.

5 A If you're going to ask me about something
6 else, I need to have my memory refreshed as to
7 what you're asking me about.

8 Q I understand. I don't think it made its
9 way into that version of the white paper.

10 A Okay.

11 Q But my understanding is that at some
12 point, the SWAT team looked at CAPI response rates
13 and they compared census tracts to a stratified
14 analysis, deciles -- percentage -- a household --
15 census tracts with the lowest percentage of
16 households with a noncitizen and -- you know, from
17 1 to 10, those with the greatest percentage of
18 households with a noncitizen, and compared the
19 CAPI response rates. Does that help refresh your
20 memory?

21 A You've refreshed my memory to the point
22 that I acknowledge that an analysis was done in

1 which tracts were stratified by decile. But I
2 would like to review what it is you're asking me
3 about, because I don't remember specifically what
4 the stratifier was and what the response was.
5 I've had to look at a lot of documents over the
6 last several weeks. I simply am not sure what the
7 exact analysis is you're asking me about.

8 (Plaintiffs' Exhibit 12, Tables, was
9 marked.)

10 Q Okay. Let me show you a document. It's
11 been marked as Exhibit 12. It's a series of
12 tables. The first page on the document is
13 AR10408.

14 And I'm looking at the third table, the
15 CAPI response rate. Now, this table shows an
16 analysis of census tracts broken into deciles from
17 least to most percentage of households with a
18 noncitizen comparing CAPI response rates; is that
19 right, Dr. Abowd?

20 A Yes. I don't recall exactly how the
21 tract deciles were determined, but they are from
22 least to most noncitizen. That's right.

1 Q So one is the decile of census tracts
2 with the lowest percentage of households with a
3 noncitizen. Ten is the decile of census tracts
4 with the largest percentage with households with a
5 noncitizen, correct?

6 A That's correct.

7 Q And, basically, what that means is, as
8 you go from 1 to 10, the percentage of households
9 in a census tract increases, correct?

10 A Percentage of households with a
11 noncitizen.

12 Q Noncitizen, sorry.

13 And when we look at -- just to take one
14 number from the table -- for the 10th decile, year
15 2016, the CAPI response rate is 87.4, bottom right
16 corner of the table. What does that mean for the
17 CAPI response rate to be 87.4 for that decile
18 census tract?

19 A I'm going to check with the author of
20 this table on the next break to make certain that
21 the CAPI here means only the nonresponse follow-up
22 that was followed up by computer-assisted personal

1 interview. We sometimes lump Internet
2 self-response in, but I don't think that was done
3 here, because Internet self-response is by itself
4 separately, and it didn't start until 2013.

5 Q Uh-huh.

6 A And up until 2016, you could also be
7 followed up with CATI, computer-assisted telephone
8 interview. So I think I've told you correctly,
9 that this is nonresponse follow-up
10 computer-assisted personal interview.

11 In that case, it means that the subsample
12 of nonrespondents that was selected for
13 nonresponse follow-up in the ACS were successfully
14 followed up with the percentages indicated in the
15 table.

16 Q So just to be clear, the subset of
17 non- -- of households chosen for nonresponse
18 follow-up on the ACS for the tenth decile in 2016,
19 nonresponse follow-up on the ACS was successful
20 87.4 percentage of the time?

21 A That's correct.

22 Q Now, if we look at this table, correct,

1 that the Bureau found that nonresponse follow-up
2 for the ACS has declined each year for each
3 decile; is that correct?

4 A That -- that seems to be correct.

5 Q Okay. And is that consistent with the
6 notion that citizenship has become a more
7 sensitive question on surveys since the year 2010?

8 A One of the reasons that this particular
9 analysis doesn't appear in some of the technical
10 papers that were relied upon by the larger group
11 of senior executives at the Census Bureau in
12 drawing their conclusions, is that the internal
13 peer review of this particular analysis suggested
14 that there were enough qualifications to that
15 conclusion that many of them were unwilling to
16 make it.

17 You correctly characterized the trend
18 lines, that there were changes to the design of
19 the survey that occurred here and there were also
20 potential other differences that -- that many of
21 the people who looked at this found qualifications
22 that -- so that's the right conclusion. But it

1 isn't a conclusion that the Census Bureau,
2 speaking collectively for the people who peer
3 reviewed this analysis, would have jointly made.

4 Q I understand there are caveats, but
5 notwithstanding those caveats, is the decline in
6 successful nonresponse follow-up for the ACS since
7 2010 suggestive of the notion that citizenship
8 questions on surveys have become more sensitive
9 since 2010?

10 A It's consistent with that interpretation,
11 yes.

12 Q It also appears that in each year, as a
13 census tract has greater percentage of households
14 with a noncitizen, that nonresponse follow-up,
15 generally, is less successful. Would you agree
16 with that?

17 A Yes. It's consistent with that
18 interpretation, as well.

19 Q Okay. So is it consistent -- is that
20 data consistent with the notion that noncitizen
21 households are less likely to cooperate with
22 nonresponse follow-up to the ACS?

1 A So we didn't -- well, if we did a
2 difference-and-difference analysis of this table,
3 I don't remember it. And I flipped and it doesn't
4 seem to be in here. So without a
5 difference-and-difference analysis, I'm not able
6 to draw a conclusion like the one you just
7 suggested.

8 Q But as a census tract gets a greater
9 percentage of households with a noncitizen,
10 generally speaking, nonresponse follow-up in that
11 census tract is less successful, correct,
12 Dr. Abowd?

13 A Is less successful than?

14 Q Than it is for a census tract with a
15 lower percentage of households with a noncitizen?

16 A You're asking me do the numbers go down
17 when the deciles go up, and that's correct, yes.

18 Q Now, I believe when you testified at your
19 last deposition, when you were talking about the
20 CAPI analysis, you described something like a
21 spreadsheet that had all the tables that you
22 looked at which had been cleared for release by

1 the disclosure review board. Does that ring a
2 bell?

3 A My testimony rings a bell, yes.

4 Q Do you believe this was the table you
5 were referring to during your deposition -- or
6 these set of tables?

7 A I believe so. As it turns out, it wasn't
8 in the same collection of spreadsheets I thought
9 it was, but I believe this was the table I was
10 referring to, yes.

11 Q Has the Census Bureau looked at the 2017
12 CAPI data?

13 A Someone in the Census Bureau may have.
14 This team has not yet analyzed the 2017 data.

15 Q Do you know if the 2017 CAPI data shows a
16 continuing trend of less successful nonresponse
17 follow-up to the ACS?

18 A I don't know. The production data from
19 the 2017 ACS won't be ready until September, and
20 so it's not until after those data have been
21 generated that you can generate a column that's
22 comparable to these columns from 2017.

1 Q Has the Census Bureau, in response to
2 this analysis or for any reason, taken any
3 measures specifically to address the lower success
4 rate of nonresponse follow-up in census tracts
5 with higher percentages of noncitizen households?

6 MR. EHRLICH: Objection. Form.

7 THE WITNESS: I don't believe that you
8 could point to any specific activity that would
9 have been explicitly stratified by this decile
10 analysis. The declining response rate is a
11 general problem, and we attempt to manage field
12 operations in a manner that is consistent with
13 keeping those response rates up. In fact, one of
14 the reasons we switched to Internet self-response
15 in the ACS was in an effort to increase the
16 voluntary response rate. So -- so, generically,
17 we're, of course, interested in keeping the
18 response rate high. It's a mandatory survey, but
19 voluntary or self-response is a critical cost
20 control factor.

21 That said, the budget for the
22 American Community Survey has not been increased

1 in proportion to the cost of living, so we don't
2 have the same resources to do nonresponse
3 follow-up. So we focus on -- we focus on those
4 things that are going to get the total nonresponse
5 follow-up on the --

6 BY MR. HO:

7 Q But has -- sorry.

8 Has the Census Bureau done anything to
9 try to address the lower rates of nonresponse
10 follow-up success in areas that have higher
11 percentages of noncitizen households?

12 A I believe I just said that I'm not aware
13 of any activity specifically correlated with --
14 explicitly correlated with these indicators.

15 Q Thank you. Sorry.

16 Just a few other quick questions. You're
17 familiar the acronym of C-S-A-C or CSAC?

18 A Yes.

19 Q And that stands for Census Scientific
20 Advisory Committee?

21 A Yes.

22 Q And the members of CSAC advised the

1 Census Bureau director of issues, including the
2 statistical data collection and survey
3 methodology?

4 A Field operations, time series analysis,
5 yes.

6 Q So they advise the Census director on the
7 topics that I mentioned, and others?

8 A That's correct.

9 Q The members of CSAC are appointed by the
10 Census Bureau director; is that right?

11 A No. The Census Scientific Advisory
12 Committee is chartered by the Department of
13 Commerce. The Census Bureau -- so you are
14 nominated in response to a Federal Register
15 notice. There is one now open through October
16 26th, I think. So you have -- you have to be
17 nominated through that process, but you can
18 self-nominate, so anyone can be nominated. Then
19 the nominations are reviewed by a committee within
20 the Census Bureau. Most -- all of the directors
21 are represented. My recollection is that most
22 send their associate directors, that's somebody at

1 my rank, but some will send a specialist. And
2 then the director conveys to the Department of
3 Commerce a set of recommendations to fill a
4 vacancy. It's the Department of Commerce then
5 decides to whom to extend that invitation.

6 Q Is it fair to say that, generally
7 speaking, CSAC members are highly regarded as
8 social scientists by the Census Bureau?

9 A Yes.

10 Q You're familiar with former Census Bureau
11 director John Thompson?

12 A I have met Dr. Thompson. Mr. Thompson,
13 excuse me.

14 Q Fair to say that the Census Bureau has a
15 high opinion of Dr. Thompson as a scientist?

16 A It is Mr., and yes.

17 Q Fair to say the Census Bureau considers
18 him well versed in standard Census Bureau testing
19 practices?

20 A Yes.

21 Q Has the Census Bureau contracted with any
22 private companies or PR firms to conduct research

1 on public attitudes with respect to answering a
2 citizenship question?

3 A The Census Bureau has awarded the
4 integrated communication contract for the 2020
5 census. Under task orders associated with that
6 contract, the CBAMS -- I expanded the acronym
7 earlier -- the CBAMS surveys and the CBAMS focus
8 groups were conducted. They were conducted by the
9 contractor, who I believe satisfies the definition
10 of an external expert on collecting survey
11 opinion.

12 And after the Secretary instructed us to
13 put the citizenship question on the 2020 census,
14 the focus group protocol was modified to begin
15 collecting information on it, but it was not time
16 to modify the survey protocol.

17 Q Who is that external contractor?

18 A So the lead contractor is
19 Young & Rubicon.

20 Q Has the Census Bureau contracted with a
21 company named Reingold to conduct research on
22 public attitudes with respect to answering a

1 citizenship question?

2 Reingold spelled R-E-I-N-G-O-L-D.

3 A I do not know whether Reingold is a
4 subcontractor in the integrated communication
5 contract. If they are, then the answer could be
6 yes. I'm not aware of another contract, but I
7 will check during a break.

8 Q Okay. Does the Census Bureau think that
9 adding a citizenship question to the 2020
10 enumeration questionnaire is a good idea?

11 A No.

12 MR. HO: Can we go off the record for a
13 second?

14 VIDEOGRAPHER: We're going off the
15 record. The time on the video is 12:07 p.m.

16 (Off the record.)

17 VIDEOGRAPHER: This begins Media Unit
18 Number 3. The time on the video is 1:03 p.m. We
19 are on the record.

20 BY MR. HO:

21 Q Dr. Abowd, I don't have any other
22 questions for you at this time, but I know you

1 said you were going to check on a few things at
2 lunch, and I just wondered if there was anything
3 in particular that you wanted to offer any detail
4 about that you were unable to -- for which you
5 were unable to do earlier?

6 A Yes. First of all, let's go to the
7 easiest one. Reingold is a contractor for the
8 Census Bureau.

9 Q Okay. What are they a contractor for?

10 A They're in -- they have one of the
11 decennial communications contracts. I have
12 requested a summary of the task orders. I haven't
13 received it yet.

14 Q Do you know what work they've performed
15 for the Census Bureau?

16 A That's why I asked for a summary of the
17 task orders. I do not.

18 Q Do you know if there are any documents
19 reflecting the work that Reingold has done for the
20 Census Bureau?

21 A I didn't ask that. I will at the next
22 break.

1 Q Any other issues you'd like to clarify?

2 A In the ACT -- I'm sorry -- ACS RCT, the
3 design was to last for six weeks of data
4 collection, so the one that would -- had it
5 started in November, those data would have been
6 collected by mid-January. There were two designs.
7 They both involved a control group, which in these
8 experiments just means the ACS says it is being
9 run, so we don't have a separate control group.

10 A questionnaire that just had the
11 American Community Survey citizenship question,
12 just the citizenship question, and a group -- a
13 treatment group that just had the CPS version, yes
14 or no. It wasn't the exact CPS version but a
15 two-choice version. And then --

16 (Thereupon, the court reporter
17 clarified.)

18 THE WITNESS: A treatment group that had
19 no citizenship question.

20 To achieve the high level of accuracy
21 would have been \$4 million. To achieve the lower
22 level of accuracy would have been 2 million, same

1 field period.

2 BY MR. HO:

3 Q Thank you. And this would have been the
4 only testing of the 2020 decennial questionnaire
5 with a citizenship question in it, correct?

6 A This is the only field testing with and
7 without citizenship question, directly analyzing
8 the citizenship question that we have considered
9 at the Census Bureau.

10 I also verified that the 2010 census
11 questionnaire had full cognitive and field
12 testing. That the 2020 questionnaire without the
13 citizenship question had -- so I asked him the
14 same way you asked me, was adequately, cognitively
15 tested; yes.

16 Q I'm sorry. Who did you ask whether or
17 not?

18 A I asked my staff -- the same group that I
19 had been asking generally about the testing, I
20 specifically asked about the cognitive testing for
21 the 2020 questionnaire, with and without the
22 citizenship question, and their answer was that it

1 was adequately tested with the citizen- -- without
2 the citizenship question, but not adequately
3 tested with the citizenship question, cognitive
4 testing.

5 Q Thank you.

6 A Okay.

7 And, thirdly, in this table, Exhibit 12,
8 the third panel, the CAPI response rate, I
9 confirmed, so I can now say the way the tract was
10 put into deciles was based on the five-year
11 American Community Survey for the middle five
12 years of the table, so 2011 through 2015. That
13 the CAPI response rate is just the CAPI response
14 rate in the nonresponse follow-up system, okay.

15 I think those were all the things we had
16 unresolved. If you think there were others -- we
17 went over our notes, but I think I've answered the
18 questions that that were unresolved.

19 MR. HO: I don't have any others right
20 now, so I'm going to pass you along to one of the
21 other lawyers for one of the other plaintiff
22 groups, subject, of course, to the issue that I've

1 raised earlier about wanting to potentially ask
2 you questions about the documents produced last
3 night. But thank you very much.

4 THE WITNESS: You're welcome.

5 VIDEOGRAPHER: We're going off the
6 record. The time on the video is 1:08 p.m.

7 (Off the record.)

8 VIDEOGRAPHER: We're back on the record.
9 The time on the video is 1:09 p.m.

10 EXAMINATION BY MS. SHAH:

11 Q Good morning -- afternoon, Dr. Abowd. My
12 name is Niyati Shah, and I represent the
13 plaintiffs in Lupe v. Ross in the District of
14 Maryland, Case Number 8:1801570.

15 I'd like to just kind of start today by
16 giving you a document, first, and we can mark it
17 as Exhibit 13. It is Bates-stamped 4802.

18 (Plaintiffs' Exhibit 13, PowerPoint, was
19 marked.)

20 BY MS. SHAH:

21 Q And this is a draft PowerPoint from
22 February 2018 titled submission of the 2020 census

1 and American Community Survey questions to
2 Congress. If you could turn to Page 4804, and it
3 has a slide and some presentation notes below the
4 slide, and notes towards the bottom say that,
5 "Requests undergo legal review of the
6 justification by DOC; technical review by the
7 Census Bureau; and policy review by DOC and OMB."

8 I'd like to put aside technical review
9 for a moment, and can you tell me what a legal
10 review is?

11 A A legal review means whether there is any
12 statutory basis -- first of all, let me preface
13 with I'm not a lawyer -- my understanding as a
14 senior executive at the Census Bureau who makes
15 use of the legal review is that they are
16 examinations of statutory basis for the request
17 and the potential for any statutory bars from the
18 request.

19 Q And who conducts this review?

20 A So the Census Bureau uses the legal staff
21 of the Office of the General Counsel and
22 Department of Commerce. A number of their

1 attorneys are assigned to us, I believe, full
2 time. They have their offices in the
3 Census Bureau, but they're on the staff of the
4 General Counsel's office and the Department of
5 Commerce.

6 Q And when is a legal review conducted in
7 the process?

8 A My hesitation is not because I don't have
9 an answer. It's because I don't completely
10 understand what you're trying to --

11 Q Sure. Sure. So as we mentioned, there
12 is a legal review, a technical review and a policy
13 review, correct?

14 A Right.

15 Q Do these happen simultaneously? Do they
16 happen in some sort of sequential order?

17 A Okay. Usually, they happen
18 simultaneously. A legal review can be ongoing
19 while operational decisions are still being made.

20 Q And to clarify, the legal review, the
21 technical policy -- technical review and the
22 policy review can all happen simultaneously?

1 A The -- they can. The policy review is
2 also a process conducted outside Census Bureau,
3 and certain parts of it are governed by legal
4 requirements. So the requirements for a
5 submission package to the Office of Management and
6 Budget to get a clearance number so that you can
7 actually conduct a survey under the
8 Paperwork Reduction Act, that has timelines.

9 And, generally speaking, leading up to
10 that, there are Federal Register notices that
11 gather comments, and they have requirements, as
12 well. So when we say the policy review, we mean
13 the whole process of gathering public comment,
14 preparing a clearance package, submitting the
15 clearance package, responding to the comments on
16 the clearance package, and then act in accordance
17 with the clearance that we're giving.

18 Q Understand.

19 So was a legal review done for the
20 Justice Department's request to add a citizenship
21 question?

22 A It is my understanding that a legal

1 review was done, yes.

2 Q And specifically by whom?

3 A In this case, that legal review was not
4 shared with the senior executive staff broadly. I
5 haven't seen it.

6 Q Do you know why it wasn't shared?

7 A I do not.

8 Q Was it shared by -- was it shared with
9 Dr. Jarmin?

10 A I don't believe so. I did forget to ask
11 him. I'll ask him on the next break.

12 Q Okay. And I would also ask if you can
13 ask if Dr. Lamas saw it.

14 A I'll ask who saw it.

15 Q Thank you.

16 And do you know when it was finally
17 completed?

18 A I do not.

19 Q And how is it generally documented, the
20 legal review?

21 A If someone at the Census Bureau has
22 requested an opinion, one of the attorneys in the

1 Office of the General Counsel prepares an opinion
2 and conveys it to the person who asked.

3 Q And in this case, did the Census Bureau
4 ask for a legal review?

5 A My understanding is that the legal review
6 was prepared at the request of Department of
7 Commerce. I'll also check that.

8 Q And then can you -- can we go back to the
9 policy review and can you explain to me who
10 conducts it in toto?

11 A So within the Census Bureau, we
12 coordinate the OMB policy review through our
13 policy coordination office, which is headed by
14 Robin Bachman. So it would be her staff's
15 responsibility to ensure that the Federal Register
16 notices have been properly prepared and that the
17 clearance packages have been properly prepared.
18 But, generally, it's the responsibility of the
19 program funded to conduct the activity to do all
20 the work, all of the substantive assembly work
21 associated with doing that. Or in the case of
22 when you get comments back, processing the

1 comments and developing answers to them.

2 Q And has -- has the policy review been
3 completed for the citizenship question?

4 A So immediately after our submission to
5 the Secretary and Congress -- our submission to
6 Congress via the Secretary of the proposed
7 questions for the 2020 census and the continuing
8 American Community Survey questions, a
9 Federal Register comment period was open that
10 closed on August 7th.

11 Q Uh-huh.

12 A So that's the initial comment period on
13 the state of the 2020 census and specifically
14 opened up after the questions are delivered to
15 Congress. They closed on August 7th. There were
16 over 250,000 comments submitted. We are -- so
17 those will be handled by staff in the decennial
18 census directorate. They will be charged with
19 putting the comments that are not in the format
20 where they can be posted on regulations.gov into
21 the correct format, and then characterizing them
22 in a manner such that the Census Bureau can

1 address them in preparing the clearance package
2 for the 2020 census, which we anticipate
3 submitting in October.

4 The clearance package itself will also
5 have a comment period of 30 days. So at the end
6 of that comment period, we will have to collect up
7 the comments on the clearance package and address
8 them, and then Office of Management and Budget
9 will make a decision about whether to issue that
10 famous eight-digit number that we can't ask a
11 survey of without that clearance number.

12 Q Okay.

13 A We are trying to get the clearance number
14 by the end of this calendar year.

15 Q And each of these reviews yield a
16 recommendation or an answer to what -- to the
17 issue that has been presented to it?

18 MR. EHRLICH: Objection. Form.

19 THE WITNESS: So we discussed the
20 technical review already, so you know what was in
21 there.

22 I do not know the contents of the legal

1 review.

2 In terms of the policy review, the
3 obligation at this stage of the policy review is
4 to correctly describe what you intend to do and
5 permit stakeholders to comment on it and then to
6 address those comments and then prepare the
7 clearance package according to the requirements of
8 the Office of Management and Budget. And that
9 generally involves a back and forth between the
10 staff preparing the clearance package and the
11 staff -- the very small staff at the Office of
12 Management and Budget who review these clearance
13 packages, to make sure that the package
14 essentially contains what that clearance staff at
15 OMB expect it to contain. And if there are going
16 to be any issues surrounding that, those are
17 generally discussed before the clearance package
18 is sent. And the clearance package, when it is
19 sent, is generally sent in the form that the
20 Office of the Chief Statistician expects it to be
21 in.

22 Q And when there is a request for a

1 question and there's a recommendation during one
2 of these three reviews against that question, does
3 a question become part of the decennial census
4 form?

5 A The difficulty in answering that question
6 is that it presumes that on December 12th, there
7 was a process in place to address a request to put
8 a question on the census -- the decennial census
9 short form. To be perfectly clear, there wasn't.
10 There had not been such a request in anyone's
11 living memory.

12 And so when the request arrived, the
13 decennial census directorate assigned its chief of
14 its communication and relations staff, Burton
15 Reist, to write what the procedure would be,
16 first, to see if there was a preexisting
17 procedure.

18 There was a preexisting procedure in the
19 following sense. The Census Bureau has always
20 considered the long form and the
21 American Community Survey to be an integral part
22 of the census. It is not the short form actual

1 enumeration, but it is part of census. And so the
2 process that we had in place for evaluating which
3 questions would be on the long form dates from the
4 creation of the long form. And it was inherited
5 by the American Community Survey and modernized
6 for the American Community Survey, and the way in
7 which these bullets on this page -- page AR4804
8 describe the process as adaptation of the process
9 that is in place and is used for questions on the
10 American Community Survey.

11 Q But to go back to my question,
12 this -- this process that we've just talked about,
13 the three reviews that are on this page, 4804, if
14 any one of those reviews advises against the
15 addition of a question, does the question get
16 added?

17 A So it would be more iterative than that.
18 If a technical review revealed that it was going
19 to be difficult to ask the question for some
20 reason -- let's speak hypothetically -- then we
21 would probably not prepare a clearance package
22 supported by a technical analysis that says this

1 is not likely to work very well. The
2 Census Bureau would re-examine the use case for
3 the particular request. If it's a -- if it's a
4 specific agency of the executive branch, one of
5 our principal statistical clients, we would work
6 with that agency to refine the request. What we
7 were attempting to determine is the least
8 burdensome way of delivering statistics that are
9 suitable for the purpose that we're being asked to
10 produce them.

11 So in that iterative process, would
12 attempt to identify a technically better way of
13 addressing the data need. And, generally
14 speaking, that -- in that iterative process, both
15 the Census Bureau and the principal client -- all
16 these data are going to be released for public
17 use, so the principal client is acting as the
18 agent of the general public in design of a
19 product. If there was an agreement that this
20 particular technical solution will work and it
21 will meet the needs, then we would -- and then it
22 would involve a modification or a question -- a

1 new question on the survey, then we would move
2 forward with the questionnaire design and the
3 testing that we would normally do, and we would
4 eventually get to the point where a clearance
5 package would be sent forward.

6 There might be some other regulatory
7 barriers. There are lots of -- I shouldn't say
8 lots of. There are several very specific
9 categories of data that statistical agencies and
10 other agencies of the federal government collect
11 that are governed by regulations of OMB. And so
12 if the request involved something that inherently
13 meant you had to modify or update one of those
14 standards, then that would also come into play.
15 And those standards are regularly modified and
16 updated, and there, the Office of the Chief
17 Statistician takes charge of creating the relevant
18 working group, preparing the modification, doing
19 the Federal Register notices on the modifications.
20 So if you have to modify the standards before you
21 can produce a survey instrument, then that process
22 would happen.

1 This would all basically go on
2 simultaneously, but no OMB clearance package would
3 be sent to the Office of the Statistician prior to
4 doing the ground work that the chief statistician
5 is known to require before she, in this case,
6 would approve the clearance request.

7 Q So did I understand you correctly that
8 the clearance package has not yet been submitted
9 to OMB with regard to the citizenship question?

10 A The clearance package for the specific
11 forms for the 2020 census has not yet been
12 submitted to OMB.

13 BY MS. SHAH:

14 Q I'm going to hand you what's Exhibit 14,
15 and I only have two copies, because they're very
16 large. I'm going to have this marked as
17 Exhibit 14, which is statistical quality standards
18 from the Census Bureau.

19 (Pleitiffs' Exhibit 14, Census Bureau
20 statistical quality standards, was marked.)

21 BY MS. SHAH:

22 Q Are you familiar with this document?

1 A Yes.

2 Q Do you follow it?

3 A The Census Bureau conducts its production
4 of statistical and other information products
5 according to these standards, yes.

6 Q And who has to follow it?

7 A All -- so it defines the types of
8 products that are covered by the -- by the
9 standards. And essentially, all outward-facing
10 products, which would be official statistical
11 products, special tabulations, research papers,
12 the reports of activity -- information summaries
13 that accompany the releases of principal monthly
14 indicators and the 2017 ACS when it's released in
15 September, so both the information products that
16 are used for the general public and the detailed
17 information product that you're releasing are
18 subject to the standards.

19 Q And -- but what I meant was -- I'm sorry
20 if I was unclear -- was, do all census employees
21 have to follow the guidelines set forth in this
22 document?

1 A So the guidelines are Census Bureau
2 guidelines, and the employee, in the conduct of
3 his or her job, when preparing an information
4 product covered by the standards, that's what I
5 just explained, would be expected to abide by
6 standards, yes.

7 Q And what about the Secretary?

8 A The Secretary is not bound by the
9 standards.

10 Q And we talked about some of the products
11 that this applies to. Does it apply to the
12 decennial census questionnaire?

13 A Yes.

14 Q And, more specifically, the citizenship
15 question, as well?

16 A Yes.

17 Q So is it fair to say that the
18 Census Bureau has to follow these standards when
19 they develop and design survey questionnaires?

20 A It is fair to say that every information
21 product and statistical program within the
22 Census Bureau is expected to follow these

1 standards? Yes.

2 Q And if you can turn to Page 5 of this
3 document -- and it's a large one, so, you
4 know -- when we're talking about Requirement A16,
5 which says that, "Quality control checks must be
6 performed to ensure the accuracy and completeness
7 of the program plans including, among other
8 things, survey designs."

9 Does this requirement apply to the
10 decennial census questionnaire?

11 A Yes.

12 Q And what does it mean, survey design?

13 A In this -- on Page 5, it has a very broad
14 interpretation. We might sometimes call it the
15 lifecycle design, all of the components that go
16 into executing a -- an information product,
17 including, to be frank, a case where there's no
18 actual survey --

19 Q Uh-huh.

20 A -- but it's the design of an information
21 product.

22 Q And has this quality check been done for

1 the citizenship question?

2 A It is the view of the senior executive
3 staff at the Census Bureau that the citizenship
4 question has been adequately tested. It is clear
5 from the timeline of that -- of the Secretary's
6 decision that it couldn't have been subjected to
7 all the testing that the rest of the questionnaire
8 has been subjected to. The question itself has
9 been through cognitive testing. The question
10 itself has been used extensively in the
11 American Community Survey. We made the decision
12 when the request from the Department of Justice
13 came that the only way we could respond to that
14 request would be to use the pre-existing
15 American Community Survey question. There simply
16 wasn't time to engineer the -- a decades' worth of
17 tests. We thought it would be inappropriate to
18 tell the Secretary that we cannot put the question
19 on the census because we have not had a decade to
20 test it.

21 So our standards permit us, in the
22 situation where because of either time or

1 budgetary constraints we have to make a decision
2 to use a question that has not been conducted
3 in -- tested in the context it's going to be used,
4 our standards permit that exception.

5 Q Okay. Let's -- I have two follow-ups.
6 Let's back up. And I understand that you said
7 that the quality check -- has it been done for the
8 census questionnaire that includes the citizenship
9 question? And I'm talking about the census
10 instrument, questionnaire instrument?

11 A So until just a few weeks ago, the print
12 version of that instrument didn't even exist in
13 draft form. It now does. And the Internet
14 self-response of that instrument won't exist in
15 draft form until sometime in September. So
16 instruments that don't exist, can't have been
17 tested in their complete form.

18 Q But was the 2020 census questionnaire
19 that was used in the 2018 end-to-end test, had
20 that questionnaire instrument been subjected to a
21 quality check?

22 A So that questionnaire was approved -- I'm

1 sorry. Let me -- that questionnaire was designed
2 and being engineered to include a combined
3 question on race and ethnicity under a long
4 negotiation with the Office Of Management and
5 Budget as to whether or not the 1997 standard for
6 the collection and publishing of race and
7 ethnicity data would be modified. It was our
8 expectation until roughly the end of 2016 that
9 that standard would be modified in a timely
10 fashion. The Office of the Chief Statistician had
11 a working group. The working group had a draft.
12 The draft had been through multiple revisions. In
13 anticipation of that draft become the new
14 standard, we used the research from the decade to
15 engineer -- to test and engineer a combined
16 question, and that was the question we intended to
17 ask on the end-to-end test.

18 Shortly before December 31st, on December
19 2st, to be exact, the acting director instructed
20 the 2020 census staff to replace the single -- the
21 combined question with a two -- two-question
22 ethnicity first, race second OMB '97 compliant

1 version. And so over the course of several days,
2 the Internet self-response instrument was
3 reprogrammed and the artwork for the
4 mail-back -- mail-out/mail-back form was modified
5 to include the two-part question. That two-part
6 question was taken from the last tested version in
7 the two-part question in the 2015 National Content
8 Test. That was all done very quickly and on
9 direct instruction from the acting director.

10 Shortly after the New Year, the executive
11 steering committee and the operating committee of
12 the Census Bureau were informed, and on
13 January 17th, the Secretary was informed by the
14 director -- by the acting director.

15 So that's -- so that's a case where the
16 questionnaire was modified at the last minute and
17 the specific form that was sent into the field had
18 never been tested in its complete form. And we
19 were aware that that's -- that should be unusual,
20 and it was unusual. However, the explicit
21 objectives for the end-to-end test were to test
22 the integration of -- I just memorized these

1 numbers -- for 35 -- no, sorry -- 44 of the 52
2 systems and 20 of the 35 operations of the census.
3 We've renumbered them a couple of times and I came
4 late to the number management. I'll check those
5 at the break. I'm pretty sure I got them right.

6 So testing the integration of our systems
7 is a different kind of operational test from the
8 kinds of controlled trials that we usually do when
9 we run content tests. This was not a content
10 test. It had to have content to be a real test,
11 but it wasn't a content test. It used content
12 that had been previously tested, although not all
13 on the same form.

14 Q And then you mentioned that when there
15 are time constraints, you don't have to
16 necessarily conduct all of those quality checks.
17 Do you have to ask for a waiver for that?

18 A It is customary to ask for a waiver.
19 Sometimes the request for a waiver comes after the
20 fact.

21 I chair the committee that hears the
22 waiver requests, and I know there was no waiver

1 request for the end-to-end test. The waiver would
2 have been granted. And I think the distinction
3 here between an operational test and a statistical
4 test is material. The standards do apply to
5 operational tests, but we do not intend to make
6 any statistical inferences from the data produced
7 by the operational test. They're also going to
8 test data to be evaluated in terms of their
9 compliance with the layouts, formats and
10 expectations of the users over what's going to be
11 in the cells.

12 So the vast majority of the standards are
13 designed to protect the scientific integrity of
14 the inferences that you make from the data that we
15 release. Since we didn't tend to make any
16 inferences from the end-to-end test like that, I'm
17 certain the waiver would have been granted, but I
18 also know it was requested.

19 Q But the quality check isn't done just at
20 the end -- just as part of the end-to-end test, am
21 I correct?

22 A Oh, that's right. Yes.

1 Q So was a waiver for a quality check
2 obtained in the question -- in this instance?
3 Sorry.

4 A So the answer to the question whether a
5 waiver was obtained for any part of the end-to-end
6 operation is no.

7 The question that I heard was, should a
8 waiver have been obtained because of the quality
9 variation over the -- over the life of the -- of
10 the survey? Let me also say that these are
11 quality standards that bind the agency, but a
12 sitting director and a sitting acting director can
13 instruct the staff to do something and they're
14 expected to do something. And while we would
15 expect a sitting director or acting director to
16 check whether there was a standard, there was a
17 lot of urgency here. So the next methods and
18 standards meeting would have been after the whole
19 decision process was made.

20 But the quality of the process by which
21 we conducted the end-to-end test was extensively
22 peer reviewed inside the Census Bureau by the

1 standards -- by the processes that had been put in
2 place to remain compliant with these standards.

3 Q Again, I want to be clear. I'm not
4 asking just with respect to the end-to-end test.
5 I'm talking about the census survey.

6 Does that have to -- for the 2020 census,
7 was the quality check requirement waived?

8 A There was no need to waive the quality
9 check requirement for any component of the
10 end-to-end test, that I'm aware of. The standards
11 are designed to make sure that we develop and put
12 in place products that have been properly tested
13 and then produce data that are suitable for their
14 use, usually inferences.

15 I agree with you -- I have to agree that
16 a rapid modification to a survey instrument that
17 is then put into the field, when the data coming
18 out of that survey instrument are expected to be
19 used for inferences is problematic with respect to
20 these standards.

21 Q Okay. Let's move on to Requirement
22 A-2.3. I believe it's on Page 8. It says, "The

1 data collection instrument and supporting
2 materials must be pretested with respondents to
3 identify problems, e.g., problems related to
4 content, order, context, effects, skip
5 instructions, formatting, navigation and edits,
6 and then refined prior to implementation based on
7 the pretesting results."

8 Do you agree this requirement is
9 important and it should be followed?

10 A Yes.

11 Q Do you agree that the order and context
12 of questions can affect the quality of responses?

13 A Yes.

14 Q And if pretesting -- I'm sorry.

15 And then formatting and navigational
16 experience of respondents can affect the quality
17 of responses?

18 A Isn't that what you just asked me?

19 Q Well, I said -- I think that there --
20 that -- so I think the navigational experience
21 probably applies more specifically to an Internet
22 survey instrument.

1 A Could you read back her precise question?

2 (Thereupon, the reporter asked counsel to
3 rephrase.)

4 BY MS. SHAH:

5 Q So I'm just going to ask both sets of
6 questions again.

7 A Would you mind pointing --

8 Q Sure.

9 A -- on this page, and be careful of her
10 coffee.

11 Q On Page 8, it's right, Subrequirement
12 A2-3.3.

13 A Okay.

14 Q So my first question is: Do you agree
15 that the order and context of questions can affect
16 the quality of responses?

17 A Yes.

18 Q And that the formatting and navigational
19 experiences of respondents can also affect the
20 quality of responses?

21 A Yes.

22 Q And then I want to direct your attention

1 towards the bottom of the page where we're talking
2 about A2-3.3 Number 2C. It's at the very, very
3 bottom. And it says that, "If pretext" -- that
4 "it should involve respondents or data providers
5 who are in the scope of data collection.

6 Pretesting must involve respondents or data
7 providers who are in the scope of the data
8 collection, and it must verify that the questions,
9 among other things, are not unduly sensitive and
10 do not cause undue burden."

11 So if pretesting had been conducted for
12 the citizenship question, the pretesting could
13 have verified that question was not unduly
14 sensitive?

15 MR. EHRLICH: Objection. Form.

16 THE WITNESS: Testing was conducted for
17 the citizenship question. I've said that
18 repeatedly in two depositions.

19 What precise testing are you asking me
20 about?

21 BY MS. SHAH:

22 Q Well, the -- is it correct that the

1 Census Bureau conducts testing throughout the
2 decade preceding the decennial census?

3 A Yes.

4 Q Would such testing reveal
5 whether -- would that be considered pretesting?

6 A Yes.

7 Q And would such testing reveal whether a
8 question is unduly sensitive?

9 A Yes.

10 Q And if so, responses collected from a
11 survey or testing aren't used for data production,
12 would you say that that question can be construed
13 as unduly burdensome?

Vague; Compound;
calls for
speculation

14 MR. EHRLICH: Objection. Form.

15 THE WITNESS: I think you just asked me
16 if you collect an item and then you don't use it
17 to tabulate anything, is that undue burdensome?
18 Yes.

19 BY MS. SHAH:

20 Q And would the Census Bureau run --
21 typically run pretesting to identify issues with
22 order, context or formatting?

1 A Yes.

2 Q And did it do so with -- in the context
3 of order, context and formatting to the
4 citizenship question?

5 MR. EHRLICH: Objection. Form.

6 THE WITNESS: If you're asking
7 specifically with respect to the questionnaire for
8 the 2020 census, no.

9 BY MS. SHAH:

10 Q And if we can go, actually, back a page,
11 to Page 7, and look at Requirement A2-2, it's at
12 the top of the page. It begins that -- a plan
13 must be produced that addresses four different
14 requirements, and I want to go through each
15 requirement separately.

16 If -- "The plan must address program
17 requirements for the data collection instrument
18 and the graphical user interface or GUI, if
19 applicable."

20 Does this requirement apply to the 2020
21 census paper questionnaire?

22 A Yes.

1 Q And to the Internet self-response
2 instrument?

3 A Yes.

4 Q And was a plan that addressed this
5 requirement produced?

6 A A plan to address this requirement is
7 being developed.

8 Q By whom?

9 A The 2020 staff in conjunction with other
10 parts of the Census Bureau who normally cooperate
11 with them.

12 Q And when will that plan be completed?

13 A So you can look to the 2020 program
14 management review where we will present what the
15 development of the questionnaire in its paper and
16 Internet self-response form. We will allow our
17 usual stakeholder groups to comment on them. We
18 will demonstrate the Internet self-response
19 instrument. We will demonstrate that nonresponse
20 follow-up instrument. We will only be able to do
21 testing within the development of moving into
22 production for the 2020 census. But the modified

1 forms will be tested to the extent that they can
2 be in those contexts. The plan is basically the
3 operational plan for the 2020 census. So as the
4 components come to readiness -- so we finish the
5 end-to-end test. We have to process what we
6 learned in the end-to-end test. We have to bring
7 the additional operational components into the
8 integration. As those steps are being completed,
9 we will make our quarterly presentations on the
10 progress of the 2020 census, and that includes
11 progress on designing, testing and implementing
12 the new form.

13 Q Let me step back. When is this
14 requirement -- this plan, rather, is it produced
15 during -- for the decennial census, particularly,
16 in general, at what period of the planning process
17 is this plan produced?

18 A So in the -- in the lifecycle of the 2020
19 census, there have been multiple versions of such
20 plans. The -- there's an overarching design of
21 the census which has a plan that says we're going
22 to try to reduce the cost of address canvassing by

1 doing much more of it in the office. That plan
2 was laid out very early in the decade. I was not
3 associated with the 2020 census at the time, nor
4 management, so I'm not sure exactly, but around
5 2012 or '13. It was substantiated in the first
6 operational publication in 2015. I did see that
7 as of my current role.

8 So as that part of the plan, we had a
9 plan to promote self-response by developing
10 Internet self-response. We had a plan to reduce
11 nonresponse follow-up by integrating
12 administrative records into the process, and we
13 had a plan to modernize the dissemination.

14 So those were high-level plans. And when
15 they go down in the organization, they get
16 instantiated into very detailed project management
17 charts. The decennial program operates with
18 formal review of all of the components of that
19 plan as they evolve over the course of the decade,
20 including the addition of the citizenship
21 question.

22 So the staff in the Census Bureau,

1 associated with the different components of the
2 2020 census are modifying their research plans,
3 their implementation plans, their evaluation
4 plans, incorporating the fact that we have been
5 instructed to put a citizenship question on.

6 For a small survey, I'd be able to say,
7 well, the plan was done in May of this month and
8 then it was reviewed -- it was determined that no
9 waivers were needed and it was taken into the
10 field. But that's pretty unusual data product. A
11 bigger agency does a big data product. So there's
12 no specific date for these.

13 That was a long winded. Sorry.

14 Q And then the next one is that this plan
15 has to address supporting materials needed for
16 data collection.

17 Is that also currently being developed?

18 A Yes.

19 Q And --

20 A And was developed for the end-to-end
21 test. Was developed for the 2017 test. Was
22 developed for the 2016 test. Was developed for

1 the 2015 National Content Tests. There were
2 separate evaluations of all of those materials.

3 Q And can supporting materials include
4 things like questionnaire instructions?

5 A Yes.

6 Q What about language-assistance materials?

7 A Yes.

8 Q And promotions or advertising materials?

9 A Most of our data collection programs
10 don't have communication campaigns associated with
11 them -- special communications. We have an
12 ongoing one that's the whole Bureau. The 2020
13 census does have a special communication campaign.
14 So specifically for 2020, there would be a special
15 communication campaign being developed.

16 Q And then we've talked a little bit about
17 this already, but it also has to address the
18 pretesting of the data collection instrument and
19 supporting materials.

20 Has that been done here for the 2020
21 census?

22 A Within the time constraints of the

1 Secretary's decision, the different components of
2 the 2020 questionnaire have been pretested. They
3 will get their first test in their presumed form
4 some time after those forms are ready. It won't
5 be an extensive field test. We have neither
6 budget or time for that. The last chance for that
7 was probably before March of 2018.

8 Q So for the full 2020 census
9 questionnaire, which would include the citizenship
10 question, has there been a waiver requested for
11 this requirement?

12 A So -- we don't think we need a waiver.

13 Q Okay.

14 A And this is not a piece of legislation.
15 It's operating principles for the agency. So an
16 example for a census that would request a waiver
17 is the economic census in 2012. The economic
18 census is a survey-based instrument. It's not an
19 enumeration.

20 So the standards say that when you
21 release the data from an economic census, since it
22 was a survey, all the data items have to be

1 accompanied by a margin of error. They weren't.
2 So the 2012 economic census did request a waiver
3 for that because that's a clear indication from
4 the Census Bureau that a piece of quality
5 information that we expect to be produced couldn't
6 be produced.

7 In this operational context, our
8 standards allow us to ask the professionals at
9 Census Bureau in a consensus form, do you believe
10 this has been adequately tested, given the time
11 and operational and financial constraints? Our
12 conclusion is that the citizenship question has
13 been sufficiently tested to not require a waiver.

14 Q Okay.

15 A The Office of Management and Budget can
16 disagree, and it can refuse the clearance package
17 without further testing of the specific form that
18 we intend to go to field with. That is within
19 their authority. And were they to do that, we
20 would, obviously, have to do something in order to
21 come into compliance. But at the moment, we do
22 not feel that question needs a waiver for testing

1 reasons.

2 Q So let me ask you a separate question.
3 Secretary Ross, in his supplemental memorandum,
4 stated that he began considering the citizenship
5 question when he first started, and I'm
6 paraphrasing here. If you had known that, then at
7 that time, could the citizenship question have
8 been added to the end-to-end testing?

9 MR. EHRLICH: Objection. Form.

10 THE WITNESS: If the Secretary had asked
11 us to test the citizenship question in -- after
12 his arrival in the Department of Commerce, we
13 could have engineered one into the end-to-end
14 test, yes.

15 BY MS. SHAH:

16 Q All right. I think we're done with this
17 document for the moment.

18 We talked a little bit earlier
19 about -- or you had talked earlier a little bit
20 about the race and ethnicity question. And is it
21 correct that the race and Hispanic origin or
22 ethnicity question for the 2000 census short form

1 changed from the 1990 census short form?

2 A I looked at those this morning. Yes.

3 Q And they changed in that they -- the 2000
4 census short form changed in that it asked both
5 the race and ethnicity or Hispanic origin question
6 for everyone and not just the race question; is
7 that correct?

8 A Now I'd have to look at the form.

9 Q Let me --

10 A It changed, basically, because the 1997
11 regulations were in place for the 2000 census.
12 And one of the reasons why the 1977 [sic]
13 standards were modified was because of the
14 difficulties with the race and ethnicity question
15 on the 1990 census, but I don't remember the skip
16 logic in the 1990 census.

17 Q I'll give you a document that may help
18 you refresh your recollection, and I think we can
19 mark it as 15. And I don't have many copies of
20 this but let me give that to you.

21 (Plaintiffs' Exhibit 15, Census 2000
22 brief, was marked.)

1 BY MS. SHAH:

2 Q So if you look at page -- first page,
3 right column, towards the bottom, it says the --
4 (Thereupon, the court reporter
5 clarified.)

6 Q "For Census 2000, the questions on race
7 and Hispanic origins were asked of every
8 individual living in the United States."

9 Does that refresh your recollection that
10 this question was for everybody -- both questions
11 were for everybody and not just --

12 THE WITNESS: For 2000, I knew that. It
13 was 1990 I asked you about.

14 BY MS. SHAH:

15 Q No. I'm sorry if I misspoke. Then I
16 meant just for the 2000?

17 A I knew 2000 was asked of everybody.

18 Q So is it also true for the 2000 census
19 the placement of the race and ethnicity questions
20 was changed such that the ethnicity question was
21 asked before the race question?

22 A The ethnicity question is asked before

1 the race question because of the studies that were
2 done in the decade in between, yes.

3 Q And then you said that the testing was
4 done. When was the testing done?

5 A Leading up to the 2000 census, there were
6 a sequence of content tests designed to refine the
7 form of the questionnaire. I think it was the
8 1996 one that did the specific test on the form of
9 the race and ethnicity question.

10 MS. SHAH: Can we take a -- can we go off
11 the record and take a quick break?

12 VIDEOGRAPHER: We're going off the
13 record. The time on the video is 1:59 p.m.

14 (Off the record.)

15 VIDEOGRAPHER: This begins Media
16 Number 4. The time on the video is 2:21 p.m. We
17 are on the record.

18 BY MS. SHAH:

19 Q So we were just discussing the 2000
20 census. I'd like to just talk very briefly about
21 the 2010 census.

22 Is it true that the Census Bureau

1 considered adding a question on ancestry in
2 conjunction with the race and Hispanic origin
3 question for the 2010 census?

4 A It is true that the intercensal tests for
5 the 2010 census included some experimentation on
6 ancestry questions -- ancestry components to those
7 questions, yes.

8 Q And is it true, also, that the
9 Census Bureau also assessed the use of ancestry
10 data -- data for editing and imputing missing data
11 for Hispanic origin and race as part of the 2005
12 National Content Test?

13 A I will have to ask whether it was part of
14 the 2005 National Content Test. It is the case we
15 experimented with information like that for our --

16 (Thereupon, the court reporter
17 clarified.)

18 THE WITNESS: Our edit and imputation
19 routines.

20 (Plaintiffs' Exhibit 16, 2005
21 National Content Test, was marked.)

22 BY MS. SHAH:

1 Q I gave you Exhibit 16, which is the 2005
2 National Content Test analysis of the race and
3 ethnicity question. If you can look at Page 2,
4 Objective 4.

5 A Page --

6 Q Page 2, Objective 4.

7 So is it true that the Census Bureau
8 assessed the use of ancestry data for editing and
9 imputing missing data for Hispanic origin for race
10 as part of the 2005 NCT?

11 A Yes.

12 Q And then -- but the ancestry question was
13 already part of the long form, correct?

14 A Nativity, meaning where were you born,
15 and it has been a component of the answers to the
16 race question that you can declare your ancestry
17 in verbatim form. If you're asking me if
18 there's -- if you're asking me if there's a
19 specific ancestry battery in the 2000 long form, I
20 don't remember one. But there are also prompts to
21 supply additional ancestry information as a part
22 of the race -- on the paper form. It just says

1 write in here anything else you want to tell us.

2 MS. SHAH: I'm going to, actually, leave
3 it at that. I'd like to go off the record so we
4 can switch questioning from another questioner.

5 VIDEOGRAPHER: We're going off the
6 record. The time is 2:24 p.m.

7 (Off the record.)

8 VIDEOGRAPHER: We're back on the record.
9 The time on the video is 2:26 p.m.

10 EXAMINATION BY MR. TALIK:

11 Q Good afternoon, Dr. Abowd. My name is
12 Karun Tilak. I'm counsel for the plaintiffs in
13 Kravitz, et al., v. United States Department of
14 Commerce, et al.

15 I just wanted to follow up on something
16 you said earlier this morning. I think you had
17 testified that the Census Bureau is obligated to
18 use available data instead -- where available,
19 instead of imposing the burden of adding a survey
20 question.

21 Is that a fair summary of your testimony?

22 A It's close. I said specifically that if

1 we asked a question and then didn't use it because
2 we had administrative data, that that would be
3 unnecessary burden.

4 Q Would it be an unnecessary burden if you
5 had administrative data but you still decided to
6 ask the question?

7 A So we often have administrative data and
8 we ask the question. Administrative data and
9 survey data have different properties. It's a
10 balancing act.

11 Q When did the Census Bureau begin
12 preparations for the 2020 census?

13 A Some of my colleagues would answer 1790.
14 As a practical matter, the staff is put in place
15 to begin developing preliminary plans at about the
16 time the current census is going into the field.
17 And then the office in charge of the 2010 census
18 was put in place in 2002, I believe.

19 Q So it takes at least a decade to prepare
20 for the decennial census?

21 A The preparation for decennial census is
22 continuous and the next one is in preparation

1 before the last one ends, yes.

2 Q And over the course of that time, the
3 Census Bureau administers a series of tests to
4 prepare for the decennial census, correct?

5 A In modern history, that's correct.

6 Q Let me clarify. I'm speaking
7 specifically about the 2020 census as it
8 administers a series of tests in order to prepare
9 for the 2020 census.

10 A All right. I thought, initially, you
11 asked me about the 2010 census. Was that question
12 also about the 2020?

13 Q About 2020, correct.

14 A The 2020 had an associate director about
15 the same time as the 2010 census was in the field
16 and the office was put in place in 2012.

17 Q And now -- approximately how many tests
18 has the Census Bureau run in order to prepare for
19 the 2020 census?

20 A '12, '13, '14, '15, '16 and '18, six.

21 Q And some of those years, have there been
22 multiple tests?

1 A We often lump them together, but yes.

2 Q And did -- was 2017 a year where testing
3 was conducted?

4 A Yes.

5 Q So, basically, every year since 2012?

6 A Yes. -- wrong -- not 2019. There's no
7 operational plan test. There will be testing.
8 There's -- testing is continuous. We're talking,
9 really, about these formal designed tests that
10 usually have an RCT component to them, but not
11 always.

12 Q And why does the Census Bureau run this
13 series of tests to prepare for 2020?

14 A In a modern business, when you develop a
15 tool that you're going to use for your flagship
16 product, you're usually going to use it
17 continuously. So in a modern business, there's a
18 continual improvement and implement phase.

19 For the census of population, that tool
20 is going to be used exactly once. So you can't
21 guess how you're going to do it. You have to take
22 the accumulated knowledge from the last times you

1 did it, multiple decades ago, and predict what the
2 environment's going to be like when you're
3 starting about a decade forward, and try to
4 balance the likely budget that you will get.
5 You'll only know the early part of it. You won't
6 know the -- with the goals -- the goal has
7 consistently been the -- an accurate actual
8 enumeration, but the goals have been expanded. So
9 the current census also has the goal to collect
10 the race and ethnicity data that are used to
11 enforce civil rights laws. So the social goals
12 have to be incorporated, and they change.

13 So it's -- it -- the Census Bureau
14 doesn't have the option of using the continuous
15 improvement model. So it has to simulate that by
16 having something that is a first roughed out one
17 and then doing continuous improvement on that and
18 then scaling it at -- we used to call the test
19 that we just completed a dress rehearsal. We
20 don't call it an end-to-end test. You scale it
21 right after that.

22 Q So these tests help you simulate what the

1 decennial census environment might be like,
2 correct?

3 A They help you predict the quality of the
4 instrument and the cost of the operations to
5 implement it and collect and process the data.

6 Q And would you agree trying to count more
7 than 300 million people across the country is a
8 fairly complex undertaking?

9 A Yes.

10 Q So the Census goes through these multiple
11 years of tests in order to make sure it get things
12 right for the 2020 census, correct?

13 A Actually, we hold ourselves to a higher
14 standard. We like to do them better than we did
15 them last time.

16 Q Because the decennial census is a
17 once-in-a-decade event?

18 A It is authorized in the Constitution.

19 Q And we discussed testing, at length,
20 earlier. Is one of the purposes that testing is
21 used for to develop predictions about field
22 operations?

1 A Yes.

2 Q And particularly options for --
3 operations for nonresponse follow-up?

4 A Among other operations, yes.

5 Q And is it okay if I refer to nonresponse
6 follow-up as NRFU going forward?

7 A I'll recognize it if you call it NRFU.

8 Q Okay. Are the tests used to help
9 project, for example, staffing levels for NRFU
10 operations?

11 A They're used to help refine the
12 projections. They're usually our early on
13 projections that are based on the most recent
14 census and then they're refined.

15 Q How are they refined?

16 A So the relevant history is the post-war
17 history of the census, and that is the era in
18 which we moved from the primary operational mode
19 is you send an enumerator into a space that is
20 defined by a physical area, and you ask that
21 enumerator to find every domicile or other place
22 where people can live, and then after finding

1 those domiciles, to count the number of people
2 that are there and to collect other information
3 about them.

4 We moved from that mode to asking the
5 residents of the United States to supply that
6 information for themselves in a manner that would
7 allow us to control whether we had received
8 information about a particular physical address.
9 So the field operators are different in those two.
10 There really -- it wasn't really NRFU before there
11 was NR to follow up.

12 Q So just talking about the 2020 census,
13 have these tests been used to project the number
14 of NRFU enumerators that the Census Bureau may
15 need to hire?

16 A Yes. They have been used along with
17 other data to do that projection.

18 Q What is the other data that's been used?

19 A Historical practice, feedback from the
20 field office and tests for the various forms of
21 the operational control systems.

22 Q And when were those tests for the

1 operations control systems performed?

2 A So every time we do a test, there's an
3 operational control system. So it's a component
4 of the data that we gather in order to revise our
5 estimates of how much effort is going to be needed
6 at each phase of the census.

7 Q And have these tests over the last
8 several years also been used to project the number
9 of census offices that the Census Bureau will need
10 to open up for the 2020 census?

11 A They have been used to revise the area
12 census office plan, yes.

13 Q Have these tests been used to test the
14 adequacy or the amount of training that
15 enumerators will receive?

16 A Yes.

17 Q And have these tests been used to test
18 NRFU -- methods of NRFU contact with households?

19 A If I rephrase your question, have they
20 been used to test a variety of NRFU protocols and
21 modes, yes.

22 Q Have these tests been used to -- in

1 relation to the census questionnaire assistance
2 telephone service?

3 A Yes. Not all of them, but some of them.

4 Q Which tests have been used for that
5 purpose?

6 A So I will have to review which of the
7 tests included a CQA. That's what we call it,
8 census questionnaire -- census questionnaire
9 assistance, which is the telephone component. The
10 end-to-end test did. The 2015 National Content
11 Test did. I can't remember whether the 2017 test
12 did or not.

13 In the next break -- I have notes on
14 this. I'll just -- fleshed short-term memory, so
15 I'm not sure. Some of them did and some of them
16 didn't.

17 Q And is it accurate that the census
18 questionnaire assistance service is there for
19 people to ask questions that they might have about
20 the 2020 census questionnaire?

21 A So the goal of the CQA is to get to the
22 point where during what we call peak operations,

1 once we mail out the invitation to take the
2 census, that we would be able to take a call load
3 that would support a large proportion of the
4 population making inquiry, expect to actually
5 enumerate a nontrivial fraction of the household
6 directly on the CQA.

7 Q By enumerate, you mean get people to
8 respond to the census over the phone?

9 A The training for the CQA operators is to
10 ask early on in the contact, would you like us to
11 just do it right now, and then begin the
12 telephone-administered instrument.

13 Q And has the testing program for the 2020
14 census been used to project the call load that
15 might be expected for that peak operations period?

16 A It has. And so has the question -- the
17 equivalent operation for the economic census,
18 which is a field mode.

19 Q Has the testing program since -- the
20 testing program for the 2020 census been used to
21 test the role of administrative records in
22 reducing the NRFU workload?

1 A Yes.

2 Q Now, for -- have any of the tests to date
3 in the 2020 census testing program, have any of
4 them included a citizenship question?

5 A No.

6 Q And so none of these tests, to the extent
7 that they were used to project staffing levels or
8 to refine the projections, would have accounted
9 for the citizenship question?

10 A Directly, no.

11 Q Would they have done so indirectly?

12 A Well, we used -- we didn't use evidence
13 from a test, but we used evidence similar to the
14 evidence generated in the test to make indirect
15 inferences. But directly, no.

16 Q What was -- what were the sources you
17 used for the indirect inferences?

18 A These are the experiments that I
19 described -- the natural experiments that I
20 described in my fact witness testimony.

21 Do you want to go through them again?

22 Q Are those the ones discussed in your

1 January 19th memo?

2 A The ones that existed at that point in
3 time are discussed in the memo, yes.

4 Q And since then, are there any other ones
5 that have been done?

6 A There are more extensive ones that have
7 been done in the full version of the technical
8 paper that was developed after the memo was
9 written.

10 Q Is that the document that was just
11 produced to us yesterday?

12 A Yes.

13 Q And besides those two sources, are there
14 any other -- let me rephrase.

15 Besides the sources discussed in those
16 two documents, are there any other sources that
17 you used to develop indirect inferences?

18 A They haven't been used yet, but we intend
19 to examine the field operation data from the
20 end-to-end test, because it occurred as the
21 information about the citizenship question was
22 becoming public. It's not clear how useful it

1 would be, but that would be another form of
2 indirect inference. There was no citizenship
3 question, but there were environmental factors
4 that intervene.

5 Q Besides that, are there any other
6 sources?

7 A None that I'm aware of.

8 Sorry. From our test operations.

9 Q And so to the extent that any tests
10 conducted to date have been used to project the
11 number of offices that the Census Bureau will open
12 in 2020, those projections would not have
13 accounted from the citizenship question, correct?

14 A In general, that's correct, yes.

15 Q And to the extent the tests were used to
16 test the adequacy or amount of enumerator
17 training, they would not have accounted for the
18 citizenship question, correct?

19 A That's correct.

20 Q And the same question with respect to the
21 testing of NRFU protocols. To the extent that
22 testing has been used to test the adequacy of

1 those protocols, they would not have accounted for
2 the citizenship question, correct?

3 A That's correct.

4 Q And the same question with respect to the
5 census questionnaire assistance. To the extent
6 the testing was used to develop a projection about
7 call loads for peak operations, those projections
8 would not account for the citizenship question,
9 correct?

10 A That's correct.

11 Q In light of the Secretary's decision to
12 add the citizenship question, will the
13 Census Bureau conduct any testing on the impact of
14 that question on staffing levels?

15 MR. EHRLICH: Objection. Form.

16 THE WITNESS: It's hard to imagine what
17 kind of testing we might do, other than on a
18 relatively small scale. However, we are working
19 closely with the integrated communication
20 campaign, which the Secretary has recommended
21 increasing the budget to 500 million. They are
22 developing messaging and other tools that we fully

1 expect to use, both with the general population
2 and with specialized groups, like enumerators.

3 BY MR. TALIK:

4 Q But there has been no testing on the need
5 for -- let me rephrase that.

6 There has been no testing on whether the
7 citizenship question will require -- require the
8 Census Bureau to increase staffing levels for
9 2020?

10 A I think I've already said there hasn't
11 been in direct testing.

12 Q Sure.

13 A We have the time, from now going forward,
14 to accumulate additional information. If the only
15 testing that you mean is randomized controlled
16 trials, I don't believe there will be one of
17 those.

18 If you mean the kind of testing that
19 modern advertising firms do in developing a media
20 campaign, that's just rolling out, and there's
21 going to be a lot of that conducted between now
22 and the start of the media campaign, and we're

1 already using that forum to collect additional
2 information.

3 Q And what kinds of tests are you referring
4 to with respect to developing a media campaign?

5 A So in the development phase of that
6 contract, we conducted the Census Barriers,
7 Attitudes and Motivators Study, CBAMS, which had
8 both the survey and the focus group component.
9 The survey was -- instrument was closed before the
10 Secretary's decision, so it was not modified. But
11 the focus group's were not closed. They were in
12 process when the Secretary made his decision. So
13 we conducted 42 focus groups and 30 of them were
14 conducted after the citizenship question was added
15 to the 2020 census. And the focus group protocols
16 were modified in a manner that kept them
17 comparable to the focus group protocols from the
18 ten that were conducted before that -- to gather
19 specific information about the effects of the
20 citizenship question.

21 Q Besides the CBAMS focus groups, are there
22 other tests that the Census is already doing or

1 plans to do?

2 A So we will small scale test the paper
3 form, the Internet self-response form, the address
4 canvas training, the NRFU training, and the other
5 components that have been modified by the
6 introduction of the citizenship question. Exactly
7 the form in which we will conduct those tests and
8 how much budget we will have to do it is not fully
9 determined.

10 That testing is not in the lifecycle cost
11 estimate, other than as it would have occurred
12 in -- on a routine basis. So every new version of
13 the Internet self-response instrument gets tested
14 and every new version of the paper form gets
15 tested, but they don't all get the full battery of
16 tests we've discussed, which tests haven't
17 occurred to date on those forms.

18 Q Just to clarify, has the Census Bureau
19 committed to doing these tests or is it a question
20 of how much budget is available?

21 A You will see in the overall plan that in
22 this phase, when we -- when we finish integrating

1 the systems and we ramp them to scale, that there
2 are testing phases. We envisioned them testing a
3 substantially complete instrument, but they'll now
4 be testing an instrument that has had a major
5 revision and we will use that opportunity to learn
6 about that revision. We will probably not conduct
7 a randomized controlled trial in that set up
8 because that involves modifying those same
9 operational control systems in order to be able to
10 do it, and that's precisely why Acting Director
11 Thompson asked the American Community Survey
12 Office to see what such a thing would cost,
13 because that doesn't involve intervening in the
14 scaling of the operational.

15 But there's all kinds of testing periods
16 in there, in both the software development cycle
17 and the hardware or paper development cycle. We
18 will use those testing periods to get experience
19 with the instrument and to do the kinds of
20 qualitative testing that's feasible in that
21 environment. And the cost for that is in the
22 budget. It would be modifications like

1 randomization something -- randomization is
2 surprisingly more expense than you realize,
3 including me when I first got into a position
4 where I could randomize.

5 Q Besides CBAMS, is there a specific test
6 for which the form has been decided that the
7 Census Bureau will undertake related to the
8 citizenship question?

9 A Not that I'm aware of.

10 Q And when does the Census Bureau intend to
11 make a decision about the form of these tests?

12 A So what has happened is the different
13 components of the Census Bureau with expertise in
14 this, have been consulting with the operational
15 program attempting to provide them with feedback
16 on how this kind of -- this kind of testing can be
17 done without disrupting the timeline. That's a
18 good question to pose at a quarterly program
19 management review. Because when you do, then from
20 out of the woodwork come the different ways in
21 which that has happened. I'm not aware of any
22 specific way in which that has happened

1 immediately, but I am aware of the conversations
2 that happened and the oversight that occurs with
3 those conversations. So when people propose that,
4 then their plan gets rush vetted. So I expect to
5 see modifications to the testing procedures so
6 that we can make sure that the -- the things that
7 are under our control get more testing.

8 Q But, so far, there has been no outcome of
9 that consultation in terms of a specific testing
10 plan for the citizenship question?

11 A So far, the results from the CBAMS focus
12 groups have been directly fed back to decennial,
13 and the new training materials are being developed
14 and those are an input to them.

15 So although we have to work fast, we're
16 not so bureaucratic that we can't process new
17 information when we get it. We have to have the
18 opportunity to get it. The CBAMS focus groups
19 were the opportunity -- the first opportunity to
20 get some fresh information.

21 Q Now, independent of testing, does the
22 Census Bureau intend to increase staffing levels

1 for the 2020 census in light of the citizenship
2 question?

3 A That decision hasn't been made. We do
4 believe that the baseline nonresponse follow-up
5 staffing levels won't be sufficient. And we have
6 a projected incremental cost that is within the
7 contingency for the field operations, but the
8 precise control of the contingency fund will
9 depend on the form of the '19 and '20
10 appropriations --

11 (Conference call interruption.)

12 THE WITNESS: I think -- I had
13 it -- could you read me back the last thing I
14 said, please?

15 (Thereupon, the reporter read the record
16 as requested.)

17 THE WITNESS: In the 2018 appropriation,
18 the Secretary directly controls the \$50 million
19 contingency. So he will have to release to us
20 some of that money to cover incremental costs
21 incurred in this fiscal year. And however the
22 appropriation is written in '19 and '20 will

1 determine what process we have to go through to
2 get funds from the contingency released.

3 I don't have direct experience with the
4 way that happened in 2010, but most of those
5 contingencies were never released, so it might be
6 the case that no one had to ask, how do we get the
7 contingency released? But I believe there was a
8 known process in 2010. There will be a known
9 process for the 2020 census, but that's going to
10 be embodied in the Appropriations Act.

11 And so if it is the current process, the
12 way the '18 appropriation is written, then we
13 would go to the Secretary and say the nonresponse
14 follow-ups are running past budget. We need an
15 extra allocation, and he would have the authority
16 to release that allocation from the contingency
17 fund. In the current lifecycle cost estimates,
18 the contingency fund for the field portion of the
19 census is over \$400 million.

20 BY MR. TILAK:

21 Q And you said he would have the authority
22 to release those funds. Would he be required to

1 do so?

2 A So if you mean legally required, I'm
3 going to decline to answer.

4 Q Do you know for 2010 whether he was
5 required to release contingency funds?

6 A I will check on the next break. I
7 believe the director had the authority to release
8 the funds in 2010, but I'm not certain.

9 Q And you mentioned an estimate of the
10 incremental costs. Was that the \$27.5 million you
11 calculated?

12 A That was the estimate on January -- in
13 January of this year. Our current estimate is
14 91.2 million.

15 Q And is there a document that contains
16 that estimate?

17 A You got it last night.

18 Q And I think you mentioned that as of now,
19 your belief is that current NRFU operations are
20 insufficient. Did I get that right?

21 A What I said is I believe we will need
22 additional NRFU resources based on current

1 research, yes.

2 Q And those would be resources you would
3 have to ask the Secretary for under the
4 contingency program you described?

5 A Under the current management of the
6 contingency funds for the 2020 census, the
7 Secretary has the authority to release them.

8 Q Does the Census Bureau have any plans to
9 increase the number of census offices it will open
10 in 2020 in light of the citizenship question?

11 A The area census office plan has not been
12 revised.

13 Q Are there plans to revise it?

14 A Not that I'm aware of. The agency's
15 answer to that question is no.

16 Q Is there a final date by which the 2020
17 census questionnaire has to be finalized?

18 A The agency's answer to that question is
19 we expect to finalize the questionnaire by June of
20 2019, the paper form. That's the -- in current
21 operational plan, that is the due date -- the due
22 month for the final artwork.

1 Q And is that the date on which printing of
2 the questionnaire will begin?

3 A When you deliver the final artwork, then
4 the printer starts to implement it.

5 Q And is that also the same month in which
6 you would have to finalize the Internet
7 self-response instrument?

8 A There is more flexibility for the
9 Internet self-response instrument. So we
10 don't -- sorry. I'm blanking. There's an
11 industry term for the software development system
12 that we're using for the software components of
13 the 2020 census, and it will come into short-term
14 memory, but it probably will by the time I finish
15 this answer.

16 In that timeline, what would happen if
17 we -- in that timeline, the instrument will be in
18 the form where we expect to be able to scale it
19 after the sprint that ends in the middle of
20 September. So that means that the software is in
21 its -- in the form in which you then move into
22 test readiness and then production. So -- but it

1 was also like that well before the end-to-end
2 test, and we were able to modify it on short term.
3 So the modification of software can be done under
4 different contingencies. The modification of the
5 print can be done under different contingencies,
6 too.

7 Q Can you expand on that, modification
8 based on contingencies?

9 A Well, if the 2019 or 2020 budget is
10 passed, instructing us to modify the paper form
11 and funding that modification, then we will modify
12 the paper form and the Internet self-response form
13 and meet the schedule. We can be instructed by
14 law to change something, even on a very short
15 notice -- most things can be changed on short
16 notice if they're adequately funded.

17 But in the current lifecycle cost
18 estimate and with the current schedule, we expect
19 to finalize the print form in June of 2019 and
20 send it to the printer, and we expect to have the
21 internet self-response instrument in software test
22 form, meaning ready to be integrated into the

1 system, in the middle of next month.

2 Q Going back to the paper questionnaire,
3 under the current budget, if there are changes to
4 the paper questionnaire after June of 2019, would
5 that impair the Census Bureau's ability to timely
6 administer the 2020 census?

7 A Without appropriate funding adjustments?

8 Q Under the current cost estimates and
9 budget?

10 A Under the cost estimates and budget, yes.

11 Q Has the Bureau developed an estimate for
12 how much additional funding it would need to
13 timely administer the 2020 census if the
14 questionnaire is modified after June of 2019?

15 A We do not have well-articulated lifecycle
16 cost estimates for such a contingency.

17 Q And for the Internet self-response
18 instrument, is there a drop-dead date by which it
19 has to be finalized in order to timely administer
20 the 2020 census under current cost estimates and
21 budget?

22 A Under current cost estimates, it should

1 go into test readiness preparation in
2 mid-September, get the appropriate scaling tests
3 that are planned for the next several months after
4 that and then go into the production environment.

5 Q And is that September of 2019 or 2018?

6 A That's next month, yeah.

7 Q September 2018?

8 A Yeah.

9 Q So under current cost estimates, if the
10 Internet self-response instrument was changed
11 after next month, the Census Bureau would need
12 additional funds in order to be able to timely
13 administer the 2020 census?

14 A What we would have to do is adjust the
15 timing of the lifecycle cost estimate. Again,
16 there are contingency funds.

17 And so, perhaps, I should clarify my
18 earlier answer. When we say within the budget, we
19 mean without going into the contingency. Whenever
20 you go into the contingency, then you do what it
21 takes. We do not think that modifications of the
22 Internet self-response instrument would take us

1 outside of the contingencies, but they would take
2 it outside of the planned budget.

3 Q How much is that contingency fund?

4 A So I only reviewed how much it was in the
5 overall and the -- in the peak field operations,
6 it's just over 400 million, and, overall, I
7 believe it's about 1.2 billion. It might be
8 1.5 billion. I will check that.

9 Q And you said the current estimate for
10 additional NRFU operations was 92.1 million?

11 A 91.2 million.

12 Q Got it backwards. I apologize.

13 And you said for the paper questionnaire,
14 the Census Bureau does not have a well-articulated
15 number for the additional costs if a citizenship
16 question -- if the questionnaire was modified
17 after June of 2019, correct?

18 A If it's modified after our -- after we
19 send artwork to the printer, we do not have a
20 well-articulated cost estimate.

21 Q And does the Census Bureau have a
22 well-articulated cost estimate for the increased

1 cost if the Internet self-response instrument is
2 changed after next month?

3 A We don't have a well-articulated one, but
4 we actually -- that would be easier to do, because
5 that's similar to what happened to the --
6 actually, we changed the print form for the
7 end-to-end test with the scales. The scale is so
8 different for the end -- the scale is not the
9 issue with changing the Internet self-response
10 program. It's the sequence of tests you put new
11 software through before you deploy it.

12 Q Right. But as of now, there's no
13 specific estimate --

14 A That's right.

15 Q -- of any of those costs?

16 Is there a deadline by which the
17 Census Bureau needs to translate materials for the
18 2020 census into foreign languages?

19 A So all the deadlines that we're talking
20 about for the final preparation of the print form
21 apply to the languages we're going to have on the
22 print form, and that's just English and Spanish.

1 All of the deadlines associated with the Internet
2 self-response instrument -- I've been discussing
3 the ones for the English language. The ones for
4 the 12 languages that will be implemented in are
5 on a different schedule, but I don't know it
6 offhand.

7 Q Is that deadline later than June of 2019,
8 do you know?

9 A So the translation occurs simultaneously,
10 but the implementation in all of the languages
11 doesn't occur simultaneously.

12 Q Is there a deadline by which the
13 Census Bureau needs to finalize materials for
14 enumerator training for the 2020 census?

15 A Yes.

16 Q What is that deadline?

17 A I don't know, but it's in -- it's in the
18 operational plan. I'll look it up for you.

19 Q Is that --

20 A Most of these deadlines are in the
21 late -- Version 3 of the 2020 operational plan,
22 which is a very long document that I do not have

1 memorized.

2 Q You mentioned that was Version 3. Do you
3 know when that was published?

4 A Late 2017.

5 Q Is there going to be an updated
6 operational plan released?

7 A I'll ask that question. I don't know.
8 But there is an answer to that question.

9 Q And so the various deadlines that the
10 Census Bureau needs to meet are contained in that
11 operational plan, correct?

12 A The timeline is, yes.

13 Q Switching gears a little bit. When
14 someone fails to self-respond to a census
15 questionnaire, the Census Bureau has certain other
16 methods of getting that information, correct?

17 A Yes.

18 Q NRFU is one of those methods?

19 A NRFU is the generic term for all of the
20 methods that we use when we don't get a
21 self-response. When we don't get a self-response
22 to the contacts that happened before, we turn on

1 NRFU -- we sometimes -- we do get self-responses
2 after NRFU, too, and we still call them
3 self-responses.

4 Q Sure.

5 So is visits by an enumerator to a
6 household that has failed to self-respond one of
7 the methods that the Census Bureau can use to
8 enumerate that household?

9 A Yes.

10 Q Are proxies another method the Bureau can
11 use to enumerate a household?

12 A Proxies are part of the protocol when the
13 field enumerator visits a domicile -- housing
14 unit. The field enumerator is instructed to try
15 to get someone who lives there to answer the form.
16 And then on the third or more try, failing that,
17 to get someone nearby who says that they had
18 information about people who live there and to get
19 as much information from that proxy respondent as
20 the proxy respondent is willing to provide.

21 Q So a proxy is only sought out after an
22 enumerator can't reach someone in a household

1 after three tries?

2 A So the protocol that I know is protocol
3 that was in place for the end-to-end test. These
4 protocols do get revised, but the protocol that
5 was in place for the end-to-end test is that when
6 the enumerator was being assigned to the third
7 visit or more at a household, that -- that
8 follow-up visit was proxy enabled. So the
9 instructions said if you fail, try to find a
10 proxy.

11 Q In addition to NRFU -- in addition to
12 visits by an enumerator to a household or proxies,
13 are administrative records another method that can
14 be used to enumerate a household?

15 A Yes.

16 Q And, finally, is whole person imputation
17 a method that can be used to enumerate a
18 household?

19 A Whole person imputation is done in
20 conjunction with the NRFU determination of
21 occupancy status.

22 Q Can you clarify by what you mean by that?

1 A It's a part -- it's a part of the field
2 operation to determine whether an address exists,
3 and if it exists whether anybody -- whether
4 anybody could live there. So it should be
5 classified as a housing unit, not something else.
6 And then whether anybody does live there. And the
7 nonresponse follow-up will include an enumerator
8 determination or sometimes an
9 enumerate- -- administrative record determination
10 of vacant or occupied. If that's all we know,
11 then there are whole person imputations.

12 In addition, if all we know is the count,
13 then there are whole person imputations for the
14 characteristics of those people. But we only
15 impute the count when the only piece of hard
16 information we have is occupancy status.

17 Q And so you would impute if you know that
18 a unit is occupied but you don't know how many
19 people live there or any other characteristics of
20 those people?

21 A That's correct. Yes.

22 Q And that would only occur if those people

1 had not self-responded or you could not enumerate
2 them through a household visit or through proxies,
3 correct?

4 A So that occurs after the sixth, in the
5 current protocol, nonresponse follow-up. The
6 enumerator is charged with getting any credible
7 information about whether somebody lives there or
8 not.

9 Q Now, besides those methods that we just
10 discussed, household visits, proxies,
11 administrative record, and imputations, are there
12 any other methods that the Census Bureau uses to
13 enumerate a household that has not self-responded?

14 THE WITNESS: Could you read it back to
15 me, please?

16 (Thereupon, the reporter read the record
17 as requested.)

18 THE WITNESS: No.

19 BY MR. TILAK:

20 Q And you mentioned that the maximum number
21 of household visits was six; is that right?

22 A In the current protocol.

1 Q And is that the same maximum number of
2 visits across the country?

3 A So the training protocol is the same, but
4 in the actual operations of a census, the area
5 supervisors have discretion. And that discretion
6 extends to sending an enumerator out for an
7 additional visit but it also extends to sending
8 multiple enumerators to the same place. So at
9 that point, you don't actually know which contact
10 visit that is until the enumeration of the field
11 data comes back in.

12 Q Has the Census Bureau made any decisions
13 as to where additional visits might be warranted?

14 A No decisions have been made.

15 Q And that's in the discretion of the
16 supervisors in the field; is that right?

17 A Well, the first thing we're going to do
18 is take the data from the end-to-end test and
19 evaluate the efficiency of the field operational
20 control system and the field performance. Those
21 data may suggest modifications. Other analysis
22 possibly engendered by the presence of the

1 citizenship question may make modifications.

2 Those modifications will have to be made
3 relatively soon. The field operations actually
4 start with address canvass and address canvases
5 start next summer. So we don't have a lot of
6 time. But the final forms of the training
7 materials and the final onboarding of those
8 activities hasn't happened. So we do have the
9 scope to make modifications, and we are intending
10 to analyze the data from the end-to-end test and
11 other data as they became available to us in order
12 to optimize that.

13 Q And the end-to-end didn't test
14 citizenship, right?

15 A There was no citizenship question on the
16 form.

17 Q And these additional data you mentioned
18 with respect to citizenship, those are possible
19 small scale tests that the Census might do, right?

20 A What I said was that the focus groups
21 from CBAMS were small scale tests and the in place
22 testing of instruments would necessarily be small

1 scale. We do not have budget for a field
2 experiment -- a field evaluation of a new
3 instrument.

4 Q And you said besides CBAMS, the form of
5 any additional test has not been decided, correct?

6 A That's right.

7 Q Now, are the area supervisors who have
8 discretion to use additional visits, are they
9 guided by any criteria?

10 A One of the goals for the 2020 census was
11 to reduce field costs, primarily through using a
12 modern vehicle scheduling system, so that's what
13 we implemented. We have a modern vehicle rooting
14 [sic] system at the heart of the operation -- the
15 field operation control system. We call it the
16 optimizer. And the optimizer performed very well
17 in the end-to-end test. So that will give us
18 scope to rely on the optimizer to get what amounts
19 to the easy part of nonresponse follow-up done
20 quickly and at low cost. It won't change our
21 budget for nonresponse follow-up, so it will give
22 us some scope to focus efforts where when we're in

1 the field monitoring the actual data, we can
2 detect variation from our expectation and we can
3 focus the resources there. It gives us the
4 capability to spend the money in the areas that
5 demonstrate they're problematic, rather than
6 having to plan to spend the money in the areas
7 that we think will be problematic. Those are
8 sometimes correlated and sometimes not.

9 Q And as of now, the Census Bureau doesn't
10 know which areas will be problematic, correct?

11 A So we use a tool called the planning
12 database that tells us historical estimates of low
13 response rate areas. And we are certainly using
14 that tool, and our targeted advertising campaign
15 is using that tool. But those are historical
16 data. We can't incorporate realtime field data
17 until there's a realtime field operation going.

18 Q And you said a household would be
19 eligible for proxy enumeration after three visits;
20 is that right?

21 A I did say that. We were discussing
22 various protocols. A household is actually

1 eligible for proxy enumeration via administrative
2 records after one visit. So we call that an
3 administrative record enumeration, and,
4 technically, a proxy enumeration is where a
5 neighbor filled it in and administration record
6 enumeration is where these ad recs filled it in,
7 but they're doing the same thing. They're
8 substituting for self-response with a different
9 form of enumeration, and they're eligible after
10 one visit.

11 Q What records would be used to enumerate a
12 household --

13 A The final decision on that has not been
14 made. I prepared to describe the protocol to you,
15 but the final decision on how the elements of the
16 protocol will be substantiated has not been made.

17 Q If you could describe the protocol, that
18 would be great.

19 A So in the protocol, we operate under a
20 data sharing agreement with the Internal Revenue
21 Service to incorporate tax returns and other
22 information -- individual and household

1 information returns, along with administrative
2 records from the Social Security Administration,
3 from Medicare, from the Bureau of Indian Affairs
4 and a few other sources, but I've hit the major
5 ones.

6 From those records, we build an image of
7 the household that we project to census date,
8 April 1, 2020. And then we use more realtime
9 information, like information returns from the
10 current tax year and the U.S. Postal Services
11 address sequencing file to isolate those addresses
12 which we think are actually occupied by that
13 household of persons around the census days for
14 the test, that was April 1 of 2018.

15 When we determine that we have accurate
16 information -- so we consider the self-declaration
17 on income tax return for the household one source
18 of accurate information, declaration of
19 dependencies and other federal programs like
20 Medicare, another source of information -- we
21 determine that we have a household roster for that
22 address, we then find a second -- and this is

1 current protocol -- federal source for every item
2 on it, and we replace all the tax items with that
3 source. If it wasn't a tax item, we compare the
4 two sources and choose one according to protocol.

5 What we now have is an administrative
6 record enumeration of that household that does not
7 depend on tax data. We copy that into the ad rec
8 area of the 2020 census, and that is a household
9 candidate enumeration -- candidate record for
10 ad rec enumeration.

11 If in the operations of the census that
12 address, MAFID, doesn't have a response, then it's
13 triggered for nonresponse follow-up, and under the
14 current protocol, a field enumerator goes to that
15 address and attempts to get an interview. If that
16 first nonresponse visit comes back unsuccessful,
17 then the ad rec becomes the enumeration and the
18 NRFU for that MAFID is turned off.

19 Q Is there a minimum quality requirement
20 for that administrative record -- let me rephrase.

21 Is there a minimum quality requirement
22 that the administrative record must meet before it

1 can be used to enumerate a household after just
2 one household visit?

3 A Yes. There are multiple cutoff criteria
4 that have been honed over the course of the decade
5 and will probably be honed again from the
6 end-to-end test.

7 Q And none of those tests have been used to
8 hone these quality requirements, including the
9 citizenship question, correct?

10 A That's correct.

11 Q What proportion of the NRFU population do
12 you expect can be enumerated through
13 administrative records?

14 MR. EHRLICH: Objection. Form.

15 THE WITNESS: In the current lifecycle
16 cost estimate -- I'm going to check this on the
17 break, because I actually know this is true for
18 Version 2 but I'm not sure it's true for Version 3
19 -- that was 6 million households we expected to be
20 able to enumerate with ad recs.

21 BY MR. TILAK:

22 Q Has any research been done on the

1 differential availability or quality of these
2 records for households with noncitizens compared
3 to the U.S. population generally?

4 A The research that has been done is
5 germane to that question, not necessarily because
6 it's specifically looking at a citizenship
7 variable, but one of the things that matter is
8 quality of the personal identifying information in
9 the ad recs. And people who file income tax
10 returns on time, in particular, are much more
11 likely to have useable PII. And that PII is the
12 language we were talking about in the early part
13 of this deposition verified -- it's audited by the
14 Internal Revenue Service. So we know the
15 characteristics of that subpopulation are much
16 more likely to be citizens, but that's not
17 specifically using the citizenship variable. It's
18 just announcing that a characteristic of the way
19 we created the administrative record eligible
20 enumerations is going to favor citizens.

21 Q So these indicative --

22 A I didn't mean favor. I'm very

1 sensitive -- is going to more likely select
2 citizens.

3 Q So is that indicative that administrative
4 records meeting the Census Bureau's quality
5 requirements are more likely to exist for citizens
6 than for noncitizen households?

7 A They are more likely to exist for persons
8 who file -- persons and households that file an
9 income tax return, and that is more likely to be
10 the case for higher income people who are more
11 likely to be citizens.

12 Q How about for racial and ethnic
13 minorities, for example, Hispanics?

14 A So this is the reason why we use Medicare
15 records, because that -- that is nearly exhaustive
16 for the population over age 65. But, again, it's
17 only if you have a Social Security number that
18 you're going to be eligible. So you have to be
19 eligible for social benefits in the United States,
20 and some noncitizens are and they're going to be
21 in those records. They're also often eligible for
22 State programs. And we did a plan to assemble

1 State records, but that's what's been evaluated
2 before we finalize which kinds of records we're
3 going to use.

4 We're making a push to require SNAP
5 records, Supplemental Nutrition Assistance Program
6 records, and we don't have them for every state,
7 and we need to make a decision about whether --
8 sufficiently complete that we will go forward.
9 That decision hasn't been made.

10 Q Returning, briefly, to proxy enumeration.
11 Will the default of three visits before proxy
12 eligibility apply across the country?

13 A It -- well, the answer is in the current
14 design, yes. But then I will say, again, that
15 field staff have the authority from the very first
16 visit to pile on, so they -- they can redeploy
17 enumerators if they -- for example, if they
18 deployed one early on in the process and our
19 quality evaluation of that enumerator's work is
20 going to cause that enumerator not to get any more
21 work, the field staff can redo some of that.

22 And we do continuous quality control on a

1 sample, so that's going to involve additional
2 visits, as well.

3 The six visits is the operational
4 guideline and the training and the expectation,
5 but the discretion of the field staff and the
6 discretion of the operational staff back at the
7 census headquarters can modify that, even if the
8 protocol was not officially modified.

9 Q And to date, are there any guidelines for
10 varying the number of visits before proxy
11 eligibility?

12 A I believe that there are not, but I
13 believe that will be part of the end-to-end test
14 evaluation, whether we should modify that.

15 Q And, again, end-to-end did not include
16 the citizenship question, correct?

17 A That's correct.

18 Q Dr. Abowd, in the memos that you wrote --
19 is that correct?

20 A That I supervised the preparation of.

21 Q That you supervised the preparation of,
22 is it accurate that you found evidence of a lower

1 self-response rate in households with at least one
2 noncitizen as a result of the citizenship
3 question?

4 MR. EHRLICH: Objection. Form.

5 THE WITNESS: With respect to your
6 question up to the phrase as a result of the
7 citizenship question, yes.

8 As I explained in my previous deposition,
9 this was a natural experiment and not a randomized
10 controlled experiment, and so what you can test is
11 what you have. So in our work that you're talking
12 about, the two groups were everyone in the
13 household is a citizen, according to
14 administrative record, versus at least one person
15 in the household is not a citizen, according to
16 administrative records. There's a third ground
17 that wasn't analyzed. That's everybody else.
18 That's the group where there's a 5.1 percentage
19 point difference between their self-response for a
20 form that includes the citizenship question versus
21 a form that does not. But that form that included
22 the citizenship question also included other

1 questions.

2 BY MR. TILAK:

3 Q Is natural experiment an accepted method
4 of research in social science?

5 A Yes.

6 Q Do you believe a decline in self-response
7 rates in households with at least one noncitizen
8 will result in a higher undercount for noncitizen
9 households?

10 A We don't have any evidence to suggest
11 that hypothesis is true.

12 Q Do you have any evidence to suggest the
13 hypothesis is false?

14 A No.

15 Q So you just don't know, one way or the
16 other?

17 A No. We think we know. We believe that
18 the net undercount -- I put the net before your
19 undercount, but I'm putting it there
20 exclusively -- that the net undercount depends
21 primarily on the energy and efficacy of the
22 nonresponse follow-up efforts. That is a lesson

1 learned over multiple censuses where we have
2 beaten that net undercount down by perfecting
3 processes that get at least some information about
4 the house- -- household -- housing unit.

5 The critical piece of information is how
6 many people live there. So if you can determine
7 that, then the rest of what's happening is you
8 don't know anything about them, so the quality of
9 the analyses you're going to do on anything other
10 than the population count is affected.

11 And truth in discussion, we know that
12 there's a differential in that undercount. We
13 make active efforts to abate that, and we have no
14 evidence that the differential undercount is
15 related to the presence of a citizen question, but
16 it is related to the macroenvironment when you
17 conduct the census. And that's not something you
18 can do a randomized controlled trial on.

19 Q Are you aware of any analysis or research
20 looking at the relationship between self-response
21 and undercount?

22 A Again, net undercount, no.

1 Q Net undercount, I will clarify that.

2 A Net undercount, no. And in preparation
3 for this deposition, I asked every expert at the
4 Census Bureau that explicit question, and I'm
5 responding with the agency's answer.

6 Q And is there any plans to conduct such an
7 analysis of the relationship between self-response
8 and net undercount in preparation for the 2020
9 census?

10 A Instead of just answering, no, I'm going
11 to explain why the answer is no.

12 Q Please do.

13 A That's a hard analysis to do on the net
14 undercount because of the way the net undercount
15 has to be estimated. It's not estimated household
16 by household with record level data, which is how
17 we performed the experiments that are documented
18 in the technical papers you've gotten, and how
19 components of the census quality are analyzed,
20 because we have record-level information due to
21 the post-enumeration survey.

22 Net undercount is evaluated using two

1 alternative estimates of the total population.
2 One is developed by what's called demographic
3 analysis and we only do that at a national level,
4 although we do have some subnational controls in
5 the demographic analysis, and the other is done by
6 the dual-system estimation and we -- in the
7 1990s -- for the 1990 census and for the 2000
8 census, we did attempt to implement a dual-system
9 estimation that would be capable of doing accurate
10 dual-system estimation below the state level. But
11 our current dual-system estimator is only accurate
12 at the national. The state level estimates for
13 the dual-system estimator are what statisticians
14 call synthetic, what econometricians call
15 estimated.

16 Q And earlier you had said that the ability
17 to abate the undercount depends on the energy and
18 efficacy of nonresponse follow-up; is that right?

19 Has the Census Bureau developed a budget
20 of how much it would need to increase its
21 nonresponse follow-up to address any decline in
22 self-response as associated with the citizenship

1 question?

2 A So we have not yet formally modified any
3 budgets. The \$91.2 million estimate that I gave
4 you earlier is our current -- we should start
5 there, because that's a conservative estimate. It
6 assumes that households that are all citizens are
7 going to respond the same way they would have
8 responded in earlier surveys, and they may not be
9 true either.

10 Q Yeah. What is the basis for that
11 assumption, that households will respond in the
12 same way as before?

13 A In social science, that's called the
14 counterfactual. There's no basis for it. I state
15 it because that's a maintained hypothesis that the
16 other -- the hypothesis under test can be compared
17 to. So if you don't make an assumption about the
18 component of the hypothesis that you can't test,
19 you can't interpret the component of the
20 hypothesis you can accept in a randomized
21 controlled trial.

22 So in a natural experiment, you have to

1 accept which things you can estimate and which
2 things you have to make a hypothesis on. So
3 making the hypothesis that households that contain
4 all citizens won't change their response behavior,
5 it's not making the prediction that they won't
6 change their response behavior. It's allowing you
7 to interpret the 5.1 percentage points or now it's
8 5.8 percentage points, and apply to a larger base
9 in a proper manner. That's why I say it's
10 probably an underestimate, because it's probably
11 not a reasonable hypothesis that the households
12 that are all citizens won't change their behavior,
13 but we don't have any evidence.

14 Q So it's your view that that's not a
15 reasonable hypothesis but it's the assumption?

16 A It's not a reasonable projection, let me
17 say that.

18 Q But it's the assumption that you had?

19 A It's not a reasonable projection. It is
20 the assumption in that analysis for the purposes
21 of generating that budget number.

22 Q And if it's not a reasonable hypothesis,

1 is it a reasonable assumption?

2 A Sorry. You keep changing my words. I
3 keep changing them back. I said you have to make
4 a hypothesis, and it's the one we made. It's not
5 a reasonable projection. That is to say, if you
6 ask us collectively do we think that the
7 self-response of all citizen households is going
8 to stay changed in an environment where a
9 controversial citizen question is on the census,
10 we would say no, we expect that their cooperation
11 would be expected, too. But we don't have any
12 scientific evidence to do the sign or the
13 magnitude of that, and we can't rule out the
14 hypothesis that they would be more cooperative.

15 Q Is there any empirical evidence that they
16 would be more cooperative, that you're aware of?

17 A I'm not aware of any empirical evidence
18 for either side of it. I have consistently said
19 that it was maintained or a counterfactual
20 hypothesis for the purposes of interpreting the
21 coefficients that you can estimate, and I've now
22 said that it's not a reasonable projection, okay,

1 which is why we labeled it conservative.

2 Q Is there an upper bound -- you had
3 mentioned 91.2 million being a conservative
4 estimate. Has the Census Bureau come up with an
5 upper bound estimate for the costs?

6 A In the lifecycle cost estimate, the
7 current one, the stress testing of that estimate
8 moved the nonresponse -- the percentage of
9 households that had to go into nonresponse
10 follow-up through a fairly wide range of
11 variation, and then it's selected as the target
12 cost estimate, the one that was at the 80th
13 percentile of the distribution. The exact
14 parameters of that range aren't in the -- in the
15 final report of that -- but -- but the text says
16 they put it through a wide range, and they put the
17 other parameters of the system through a wide
18 range. So the 80th percentile was used to
19 generate the base budget and then the higher
20 quantiles were used to generate the contingency.

21 Q Going back to nonresponse follow-up for a
22 second, are you aware of analysis of the efficacy

1 of nonresponse follow-up for noncitizen households
2 versus the rest of the United States population?

3 A There is analysis in the Report G01 from
4 the 2010 census, which I know have been supplied.

5 Q Besides G01, is there any other analysis
6 you're aware of?

7 A There are components of that in the
8 rest -- so the coverage -- Census Coverage
9 Measurement Program, CCM [sic], for the 2010
10 census have data that allows one to look carefully
11 at that, yes.

12 Q And does that analysis also look at the
13 efficacy of nonresponse follow-up for Hispanic
14 households versus the rest of the U.S. population?

15 A Yes.

16 Q And does it also look at the efficacy of
17 nonresponse follow-up for households with limited
18 English proficiency versus the U.S. population?

19 A I'll have to check. I don't think so. I
20 think it uses variables that were collected in
21 either the census or what's called the Census
22 Coverage Measurement Survey for that, and language

1 proficiency would not have been one of those.

2 Q Now, if a household is only partially
3 enumerated in self-response, supposing there are
4 four people, and it only reports there's one
5 person living in the household, does that
6 household go into NRFU or is it marked as
7 enumerated?

8 A It doesn't depend on just the number of
9 persons who live here box. It depends on how much
10 of the information we get about those persons,
11 again, according to protocol, that hasn't been
12 finalized. The -- the generic version of that
13 formula would be: Do we know your name, do we
14 know age or birth date and sex? So if we had
15 substantially complete information, that's the
16 definition of it, and we wouldn't send the
17 household into nonresponse follow-up. We might
18 send it into field quality control, but those are
19 not targeted, based on the responses. Those are
20 samples of the respondents that are -- they're
21 basically generated to check that the enumerators
22 are doing their job.

1 Q Are they randomly generated?

2 A I can't say that they're randomly
3 generated, according to a protocol that I have
4 examined. They are not necessarily related to the
5 completeness of the form, but there's -- there's
6 scope to have them be related to that. There's
7 scope in the system to have them be related to
8 virtually anything we want, and I don't know what
9 exactly was implemented for the end-to-end test.

10 Q I'd like to briefly discuss whole person
11 imputation. What records are used for whole
12 person imputation?

13 A So there's two kinds of whole person
14 imputation. When we have to impute the number of
15 persons who live in an occupied household, then
16 those are actually -- those are whole person
17 imputation and may result in whole person
18 substitutions, which means that, essentially, all
19 the characteristics of that household have been
20 imputed.

21 Q And to clarify, that's specifically what
22 I'm talking about if you're --

1 A Whole person substitutes.

2 Q Exactly. Yes.

3 A Okay. Because we also do whole person
4 imputations when we know the count but we don't
5 know anything else -- or limited amounts of stuff.

6 Q Focusing on if you don't know the count
7 and you're trying to determine the count of
8 individuals, the imputation -- or substitution --

9 A So the algorithms that will be used in
10 2020 for the whole person substitutions have not
11 been finalized. The algorithms that were used in
12 2010 were variations of hot-deck imputations.

13 (Thereupon, the court reporter
14 clarified.)

15 THE WITNESS: Hot-deck, hyphenated.

16 BY MR. TILAK:

17 Q Do you expect the protocols for 2020 or
18 the algorithm for 2020 to be different from 2010?

19 A We have been actively experimenting with
20 additional uses of administrative record as a
21 substitute to for or compliment to hot-deck
22 imputation, so it's a live candidate.

1 Q But no final decision has been made?

2 A No.

3 Q When does the Census Bureau expect to
4 make a final decision?

5 A A necessary condition for a final
6 decision is to have the processing software that
7 the various files must move through in order to
8 produce final estimates in place, and it's not.
9 It will be in place -- it's not off schedule. It
10 will be in place as the rest of the end-to-end
11 test is completed. And then when you have that in
12 place, you can actually start testing these things
13 in the operational environment. They're currently
14 being tested in a research environment, and that
15 research has been going on for more than a decade.

16 Q Has any of that research looked at the
17 accuracy of whole person substitutes for
18 noncitizen households versus the rest of the U.S.
19 population?

20 A No.

21 Q Has any of that research looked at the
22 accuracy of whole person substitutes for other

1 hard-to-count communities as compared to the U.S.
2 population?

3 A The research that was done with the 2010
4 Census Coverage Measurement studies included
5 analyses of the components of the year-end census
6 by characteristics like the ones you just recited.

7 Q And that's the G1 --

8 A That's the G series.

9 Q The G series may help us, okay.

10 Has the Census Bureau decided what
11 geographical unit will be used for whole person
12 substitutions?

13 A I'm not sure I know what the question
14 means.

15 Q In general, when imputation is done -- or
16 substitution is done, does that rely on records
17 from surrounding communities?

18 A The hot-deck imputation algorithms that
19 were in place for the 2000 and 2010 census did use
20 nearby records. Statistical imputation systems do
21 not have to.

22 Q Is that still the plan for 2020?

1 A There is no plan for 2020. That is among
2 the candidate algorithms.

3 Q So no final decision has been made?

4 A That's right.

5 MR. TALIK: If we could go off the record
6 and take a short break.

7 VIDEOGRAPHER: This is the end of
8 Media Unit Number 4. The time on 3:40 p.m. and we
9 are off the record.

10 (Off the record.)

11 VIDEOGRAPHER: This begins Media Unit
12 Number 5. The time on the video is 4:04 p.m. We
13 are on the record.

14 BY MR. TILAK:

15 Q Dr. Abowd, is there any empirical
16 evidence that someone who chooses not to respond
17 to this 2020 census because of the citizenship
18 question would respond in a face-to-face
19 interaction with a census enumerator?

20 MR. EHRLICH: Objection. Form. Vague

21 THE WITNESS: Not that I'm aware of.

22 BY MR. TILAK:

1 Q And if that household doesn't respond,
2 census enumerator would then try to find a proxy,
3 correct?

4 A That's correct.

5 Q And is there any empirical evidence on
6 the accuracy of proxy enumerations for areas with
7 large noncitizen populations compared to the rest
8 of the United States?

9 A Only indirect.

10 Q And what is that indirect evidence?

11 A That evidence that's in the technical
12 reports that you've seen.

13 THE WITNESS: The evidence that's in the
14 technical reports that you have seen.

15 BY MR. TILAK:

16 Q And if a proxy is not found, the census
17 could then also use administrative records to
18 enumerate the household, correct?

19 A The census may use administrative records
20 whether or not a proxy respondent is found.

21 Q But based on your earlier testimony, the
22 characteristics of the administrative records are

1 such that there are more likely to be
2 administrative records for citizens compared to
3 noncitizens?

4 A I think that's a reasonable hypothesis.
5 I don't actually have any empirical data to
6 support it.

7 Q And this, finally, this whole person
8 imputation, is there any empirical evidence on the
9 accuracy of a whole person imputation for
10 noncitizen households versus the U.S. population?

11 A So whole person substitutions and whole
12 person imputations are not very accurate. We've
13 documented that for multiple censuses, but we
14 documented it most carefully for the 2010 census
15 where we explicitly looked at it. We know that.

16 Q And so you would agree that --

17 A We don't count them as correct
18 enumerations, because we require that the
19 characteristics be correct, not just the count.

20 Q So you would agree with all the censuses
21 procedures to try to enumerate a household, some
22 people are always missed in the decennial census?

1 A If the question to me is do we
2 acknowledge that some people are always missed in
3 a census, the answer is yes. Some people are also
4 counted twice.

5 Q And those would be erroneous
6 enumerations, correct?

7 A So one's omissions and the other is
8 erroneous enumerations, yes.

9 Q I'd like to have this marked as
10 Exhibit 17.

11 (Plaintiffs' Exhibit 17, G series
12 documents, was marked.)

13 BY MR. TALIK:

14 Q Dr. Abowd, do you recognize this
15 document?

16 A Yes. I was looking for the number, it's
17 G4.

18 Q Is this one of the G series documents we
19 spoke about earlier?

20 A Yes, it is.

21 Q If I could just refer you to Page 1 of
22 the executive summary, and the last full paragraph

1 it says, "The correct enumeration estimate was
2 284.67 million people."

3 The correct enumeration is the number of
4 people who were correctly counted, correct?

5 A In the right place.

6 Q It then says the erroneous enumeration
7 estimate was 10.04 million people. What -- what
8 are erroneous enumerations?

9 A They consist of persons who are counted
10 twice, duplicates, and persons who are improperly
11 counted at the location that they were recorded
12 at, so not within what's called the -- what's
13 called the coverage evaluation search area.

14 Q And then it goes on, the second to last
15 sentence, "The Census Coverage Measurement
16 estimated that 16 million people were omitted from
17 the census, and omissions are people who should
18 have been enumerated in the United States but were
19 not."

20 Omissions are people who did not
21 self-respond and were not counted through NRFU; is
22 that accurate?

1 A Gross omissions are people that the
2 dual-system estimation predicts should be there
3 that we didn't actually find. It's an estimate.

4 Q Is it a reasonable estimate of people who
5 should have been counted but were not?

6 A It's gross. We don't know that they were
7 not counted. We just know they were not in the
8 correct enumeration population.

9 Q And then, finally, it says that many of
10 these people may have been accounted for by the
11 5.99 million whole person census imputations.

12 A Yes. That's what I said, but I used
13 different words. That -- the next sentence says
14 why you don't count gross omissions of people that
15 have been missed.

16 Q But some percentage of them are people
17 who have been missed, correct?

18 A That a reasonable statement, yes.

19 Q In fact, in this case, somewhere between
20 10 and 16 million people were missed, correct?

21 A No. It's not bounded that way.

22 Q Okay. Why is it not bound that way?

1 A Because the -- the dual-system estimation
2 and the demographic analysis are designed to
3 measure net undercount and differential net
4 undercount. As a byproduct, they generate this
5 number that is labeled omissions, but it's gross
6 omissions. It doesn't mean that this many people
7 are missing from the census. It means the
8 residual category is only explainable as a
9 difference between the dual-system estimator and
10 the correct enumerations.

11 Q And besides those people not being
12 counted, what other reason would there be for
13 those residuals between the estimation and the
14 census count?

15 A Well, there are two decades of litigation
16 on this, but the dual-system estimator might be
17 wrong, too, or the demographic analysis.

18 Q But you would agree some portion of the
19 omissions were people not counted in the 2010
20 census?

21 A I'll agree there is probably some gross
22 undercount, as well as net undercount, but we

1 don't know its order of magnitude.

2 Q Would you agree that the undercount is
3 differential between different subpopulations in
4 the United States?

5 A We have documented that the net
6 undercount is differential.

7 Q And are hard-to-count populations
8 specifically likely to be undercounted
9 differentially compared to the rest of U.S.
10 population?

11 A That's almost tautological. When we
12 label a subpopulation hard-to-count, one of the
13 indicators we use is its net undercount.

14 Q Let's next turn to Page 9, and the
15 last -- the paragraph, it says, "The black alone
16 or in combination and the Hispanic populations had
17 a larger percent omissions than the non-white
18 Hispanics" --

19 A Sorry. Sorry. You got there too fast.
20 Point.

21 Q It's the second paragraph.

22 A Got it. Okay.

1 Q "The black alone or in combination and
2 Hispanic populations have larger percent
3 omissions, 9.3 percent and 7.7 percent,
4 respectively, than the nonwhite -- non-Hispanics
5 white-alone population."

6 Is it accurate that the census's
7 enumeration procedures are more likely to the
8 Hispanics -- members of the Hispanic population
9 compared to the non-Hispanic white population?

10 A I think the answer to that question is
11 yes, but I would not use the information in this
12 table to answer that question. I would use the
13 information in the net undercount table, which
14 is -- it might not be in this report, but there's
15 a summary in G01.

16 Q Got it.

17 And then turning to Page 17, this refers
18 to -- refers to bilingual mailing areas. Are
19 bilingual mailing areas where the population is
20 likely to have limited English proficiency?

21 A So bilingual mailing areas for the 2010
22 census would have been predicted from the 2005 to

1 2009 language questions in the American Community
2 Survey. So they're indicators of households that
3 speak more than one language.

4 Q And, again, the omission percentage for
5 bilingual mailing areas in Table 9 is 7.3 percent
6 compared to 5.3 percent for the U.S. total. Is it
7 accurate that the census's enumeration procedures
8 are more likely to miss people living in bilingual
9 mailing areas compared to the U.S. population,
10 generally?

11 A I'll correct your question. If you mean
12 gross omissions, that's what the table describes.
13 If you meant net undercount, you can't get that
14 from this table.

15 Q What table would you refer to for that?

16 A If we have a net undercount estimate, it
17 would be in one that is labeled net undercount
18 as -- or percentage net undercount, one of those
19 two. I don't know -- I don't know the contents of
20 all of those G series reports. They're summarized
21 in G01.

22 Q If I can refer you to the column just to

1 the left of omissions percentage undercount, is
2 that the net undercount?

3 A Thank you. Thank you.

4 Q And is the Number .80 for bilingual
5 mailing areas?

6 A Yes.

7 Q And the asterisk indicates that it's
8 statistically significant, correct?

9 A At the 90 percent level, yes. That's
10 correct.

11 Q And so given that information, is it more
12 likely that the census's enumeration procedures
13 would miss people living in bilingual areas
14 compared to the U.S. population?

15 A Yes. That's what a positive differential
16 net undercount is.

17 Q And then going back to Page 9 on Table 2,
18 which we were at earlier.

19 A Was there one there, too, and I missed
20 it? Yes, there was. Okay.

21 Q If we look at the bottom of Table 2, the
22 net -- the percent undercount is 1.54 percent?

1 A Yes.

2 Q And that's statistically-significant --

3 A Yes.

4 Q -- compared to the U.S. population?

5 So with that information, is it more
6 likely that the census's enumeration procedures
7 will miss members of the Hispanic population
8 compared to population --

9 A There's a differential net undercount for
10 Hispanics, yes.

11 Q Now, this is all for the 2020 census.
12 Does the Census Bureau expect not to have a
13 differential undercount of Hispanics for the 2020
14 census?

15 MR. EHRLICH: Objection. Form.

16 THE WITNESS: The Census Bureau expects
17 to improve its net undercount performance every
18 census and targets the populations that had
19 previous net undercounts for special attention.
20 Sometimes with tests that have been demonstrated
21 to be more effective and sometimes with
22 advertising campaigns that have looser empirical

1 connection. Although we used targeted advertising
2 in 2010 to try to address net undercount issues,
3 and it was successful in its evaluation. That's
4 why we were trying to do more targeted
5 advertising, why we included a specific component
6 in the integrated communication contract for
7 targeted marketing. And one of the indicators
8 being used for the targeted marketing is our low
9 response rate indicator, which is not the same
10 thing as a net undercount. These numbers are not
11 available at levels of geographic detail that
12 would be useful, but they have correlates, like,
13 lower response.

14 BY MR. TILAK:

15 Q You said to improve. Do you also expect
16 to eliminate the differential undercount for
17 hard-to-count populations?

18 A We design the census, and we optimize the
19 efforts in order to control the net undercount.
20 We are trying to achieve a zero net undercount,
21 but the census is a human operation, and we
22 evaluate it for the coverage years. We will learn

1 when we evaluate it whether we were successful.

2 Q Do you agree that adding the citizenship
3 question will make it more difficult to achieve
4 that goal of reducing undercount for hard-to-count
5 populations?

6 MR. EHRLICH: Objection. Form.

7 THE WITNESS: It will make it more
8 difficult to correct -- to collect accurate data
9 on the enumeration, which will complicate the
10 assessment of net undercount, because the
11 indicators, the right-hand side variables, won't
12 be as accurate as they are if you get more
13 self-responses.

14 MR. TALIK: We can go off record.

15 VIDEOGRAPHER: We're going off the
16 record. The time on the video is 4:19 p.m.

17 (Off the record.)

18 VIDEOGRAPHER: We're back on the record.
19 The time on the video is 4:20 p.m.

20 EXAMINATION BY MR. ADAMS:

21 Q Good afternoon, Dr. Abowd. My name is
22 Rory Adams. I represent the City of San Jose and

1 the Black Alliance for Just Immigration in the
2 action pending in Northern District of California.

3 What is the purpose of the 2020 CBAMS?

4 A Census Barriers, Attitudes, Motivators
5 Survey?

6 Q Yes.

7 A Sorry, study.

8 There's both a survey and focus group
9 component. Its primary objective was to gather
10 information on indicators that we call barriers,
11 indicators that we call attitudes and things that
12 we think of as motivators. So a barrier is a
13 reason why someone might not complete the census.
14 So the questions asks, for example, are you
15 planning to fill out the census, and if not, well,
16 we try to get some reasons.

17 An attitude might be, do you think
18 that -- do you trust the government, do you think
19 that your 2020 census information will be kept
20 confidential?

21 And motivators are things like do you
22 think it's important to equitably allocate the

1 seat -- equitably reapportion the
2 House of Representatives?

3 The -- some of the statistical modeling
4 was based on historical relationships between
5 these kind of variables and the actual indicators
6 that they took -- they filled out in the census,
7 self-responded on the census.

8 Q You said there are two components, a
9 survey component and a focus group component?

10 A Yes.

11 Q How is the survey component designed?

12 A I'm going to answer specifically with
13 respect to what I believe we're labeling the 2020
14 CBAMS, but, internally, we've been calling it the
15 2018 CBAMS because it was conducted in 2018.

16 That is a household probability sample.
17 So it had a frame from our master address file,
18 which is the address frame that we keep
19 continuously as accurately -- as accurately as we
20 can in which is rebenchmarked in the decennial
21 census. So we use the production, master address
22 file, to sample 50,000 households -- no -- 50,000

1 MAFIDs. Then the -- the primary instrument was an
2 Internet self-response instrument run off the same
3 computer system with the American Community Survey
4 and many of the economic surveys are run off of.

5 If the -- if the contact, which is by
6 mail, comes back determining that there's nobody
7 living there, so they're removed from the scope of
8 the sample, and then we calculate the percentage
9 of households that we get a response from. So
10 about 17 percent -- about 17,000 of the 50,000
11 households responded. In the way we calculate
12 response rates, that's about a 38 percent response
13 rate.

14 Q And I'm going to hand you what's going to
15 be marked as Exhibit 18.

16 (Plaintiffs' Exhibit 18, 2020 CBAMS
17 survey, was marked.)

18 BY MR. ADAMS:

19 Q And I will represent that this is a
20 document downloaded from the Census Bureau's
21 website and identified as the 2020 CBAMS survey.
22 Do you recognize the document as being the 2020

1 CBAMS survey?

2 A So I've only ever seen the code book, not
3 the instrument. But I recognize questions, so I
4 think this is the right questionnaire.

5 Q And how -- how are these questions
6 selected for inclusion in the survey?

7 A We conducted a much more limited CBAMS in
8 2008. That, I believe, was the first time we
9 attempted to get pre-census information on factors
10 that might affect the costs of carrying out the
11 census, the effectiveness of the census. There is
12 a -- there is a research staff led by one of
13 the -- by a senior survey methodologist,
14 Nancy Bates, and with other senior mathematical
15 statisticians and with other senior survey
16 measurement experts, some in the Center For Survey
17 Measurement and some in the decennial census
18 statistical divisions, and some in the other parts
19 of the Census Bureau. They put this instrument
20 and the survey through our lifecycle survey
21 development program.

22 They had constructs that they were trying

1 to capture. Some of which they believed to be
2 well captured by questions that had been used in
3 older CBAMS. Some of which come from questions
4 that are used by other survey organizations to
5 measure general attitudes. There are a large
6 number of those and our survey measurement experts
7 are very familiar with them.

8 So -- so they would have had a set of
9 candidate questions -- they have, generally
10 speaking, a known budget or approximate budget,
11 and experience in planning how much of that budget
12 has to be allocated to instrument development,
13 instrument testing. So if it's an Internet
14 self-response, so there's no field operations for
15 the data collection operation. There was no
16 nonresponse follow-ups, so that phase isn't there.
17 And then, post -- post-response processing and
18 data editing tabulation. So they would have had a
19 tentative plan for allocating their budget across
20 the steps and then put the questionnaire through
21 cognitive testing, the questions, unless the
22 question has been previously cognitively tested,

1 and then laboratory testing of the whole form.

2 And then I believe they used a small
3 experimental sample. Our -- I'm not sure they
4 used an experimental sample. They might have all
5 been done with laboratory samples, so those are
6 people that were recruited into our labs to take
7 whole instruments as opposed to single questions
8 or focus groups. The Center For Survey
9 Measurement has laboratory facilities that can
10 simulate the survey environment or simulate
11 questions or conduct a focus group. They would
12 have used a combination of those tools to get the
13 instrument in place.

14 One of the statisticians on the team
15 would have drawn the address sample from the MAF.
16 The addresses would have been prepared, mail-out
17 materials inviting you to participate would have
18 been prepared, and then the effort staged during a
19 fixed field operation.

20 The survey was conducted in collaboration
21 with -- in collaboration of Y&R, Young & Rubicon,
22 the lead contractor in the integrated

1 communication contract, and Y&R and other
2 subcontractors in that contract also participated
3 in the development and some of their resources
4 were used, as well.

5 Q Will the result of the 2020 CBAMS be used
6 only for the purposes of the 2020 census?

7 A Well, I'm sure the answer to that
8 question is no, because our data can be used
9 regularly. They were collected primarily in
10 support of the 2020 census. That's a funding
11 issue. So we couldn't have run a survey like this
12 intending to use it primarily for the SIPP and
13 charged it to 2020. So its principal reason for
14 being conducted was in support of the 2020 census.
15 But it produced useful data. We are still using
16 the data for the one we conducted in 2008 in
17 support of the 2010 census. So it's a reasonable
18 presumption that the data will be used for other
19 purposes, but their primary purpose is in support
20 of the 2020 census.

21 Q I believe you testified earlier that when
22 you were trying to draft the protocol for adding a

1 question to the decennial census, that you looked
2 to the processes and procedures that were used to
3 vet and add questions to the ACS and the long
4 form, because they were also considered to be part
5 of the census; is that correct?

6 A That's correct.

7 Q And both the ACS and long form included a
8 citizenship question, correct?

9 A That's correct.

10 Q Was a decision made at any point to
11 include or not to include a citizenship-related
12 question on the CBAMS survey?

13 A There was no active decision. I believe
14 that if even a rumor of a citizenship question had
15 been actively circulating through the
16 Census Bureau, the development team would have
17 attempted to gather information about that, and I
18 believe that the Office of Management and Budget
19 would have approved it in issuing the clearance
20 number.

21 Q To be clear, a citizenship question has
22 appeared on the ACS and the long form and was

1 planned for inclusion in the ACS in 2020, correct?

2 A And 2019 and 2018, correct.

3 Q Right. In light of the fact -- and that
4 is considered part of the census, the ACS?

5 A Yes.

6 Q So in light of the fact that at least in
7 part of the census, the citizenship question was
8 going to appear, there was no consideration to
9 testing that in CBAMS survey?

10 A So for starters, the CBAMS survey isn't
11 about testing questions for either the ACS or the
12 decennial census. And to be perfectly clear, the
13 2020 census is a separate budget appropriation
14 from the ACS. So, once again, the principal
15 purpose of this document couldn't have been to
16 test questions for the ACS. It had to be to test
17 the environment and the successful conduct of the
18 2020 census. That had to be the principal
19 purpose.

20 Good survey methodologists -- and I
21 believe a very good crew worked on this -- are
22 quite sensitive to things that you want to get a

1 measurement of ahead of the pack. But it
2 literally wasn't on the radar screen in a way that
3 was -- that the team developing this instrument
4 caught. As soon as it did, they modified the
5 protocol for the focus group. So I'm sure that if
6 six -- I can't actually be sure about at six
7 months. I'm sure that if there had been time to
8 modify the questionnaire for CBAMS, it would have
9 been modified.

10 The compromise was that the first use of
11 these results is to program the advanced buys for
12 the advertising campaign, and that has a very
13 tight deadline. Those buys start earlier next
14 year. So they need to be doing the analysis, and
15 this time, we did it with an external partner. So
16 in addition to doing the analysis -- and
17 this -- they had to design protocols for conveying
18 the information outside of the Census firewall to
19 the Young & Rubicon system so they could do these
20 targeted advanced buys, and we didn't have
21 protocols for that. We did all of that
22 internally, so we didn't have to worry about

1 producing public-use summaries of the data so they
2 could be given external to the Census Bureau.

3 A contract is no different than any other
4 person. If we release the data to the contractor,
5 the contractor is allowed to operate with those
6 data outside the Census firewall, then those are
7 public data. So we had to figure out a way to
8 make the data public, as well.

9 Q Exhibit 18, this -- the survey instrument
10 was finalized prior to December 12, 2017?

11 A Yes. I don't know exactly when it was
12 finalized. OMB clearance packages are public, so
13 you should be able to use that OMB clearance
14 number at the top of the form to see the date it
15 was finalized.

16 There's a pretty -- there's a pretty long
17 planning period to get an instrument all the way
18 through the approval process. That's why we want
19 the clearance package for the 2020 census to be
20 approved by the end of 2018.

21 Q In your -- in your individual deposition,
22 I believe you testified that there were a number

1 of questions in the survey that were considered
2 salient for purposes of analyzing the impact of
3 the citizenship question, but you weren't sure
4 which questions those were. Looking at the survey
5 now, can you identify which questions are salient
6 for purposes of analyzing the impact of the
7 citizenship question?

8 A What I wanted to look at -- and you
9 haven't given me, but I did look at -- is the
10 interim report, which you won't have because it's
11 not public. Although the discovery has produced
12 the public use micro sample file that we released
13 to the contractor, because it was cleared by the
14 DRV. So you do have that.

15 But what the report says is that most of
16 the information we got out of CBAMS about citizens
17 came from the focus groups. But we were very
18 concerned about the high level of answers to
19 questions like, do you think the Census Bureau's
20 data can be used by another government agency? Do
21 you think the Census Bureau is required to
22 protect -- since I've seen the code book and the

1 tabular form, I'm not quite sure where the
2 questions are, but if you give me a second, I'm
3 sure I can find them.

4 MR. EHRLICH: Page 6.

5 THE WITNESS: Ah, yes. There it is.

6 "Question 38: How concerned are you, if
7 at all, that the Census Bureau will not keep
8 answers to the 2020 census" -- "How concerned are
9 you, if at all, that the Census 39" -- "that the
10 Census Bureau will share answers to the 2020
11 census with other government agencies? How
12 concerned are you, if at all, that the answers you
13 provide to the 2020 census will be used against
14 you" -- so those questions are considered relevant
15 correlates of potential difficulties with the 2020
16 census due to the presence of the citizenship
17 question.

18 Those attitudes -- I think we actually
19 classified these barriers, those responses are
20 neutral, classification of them, were also true to
21 an extent before the 2010. The belief in certain
22 portions of the population that the Census Bureau

1 either isn't required by law to keep the answers
2 confidential and to not supply them to other, say,
3 agencies or might do that in spite of the current
4 requirement of the law, that is a known barrier.
5 And so its prevalence in the population is
6 something we use to both target advertising in the
7 case but also target other efforts.

8 So these data will be used to do
9 something called small area estimation to help
10 identify where -- which areas should be targeted
11 with a communication campaign that addresses the
12 fact that we are not, by law, allowed to give the
13 data in identifiable form to anyone, including
14 other government agencies, and including, in
15 particular, the immigration and naturalization
16 services, and we have not done so since those
17 protections were enacted into law in 1954.

18 BY MR. ADAMS:

19 Q I'd like to get to the interim report in
20 just a minute, but beforehand, I want to show you
21 Exhibit 19.

22 (Plaintiffs' Exhibit 19, 2020 CBAMS brief

1 update, was marked.)

2 BY MR. ADAMS:

3 Q This is a document entitled 2020 census
4 barriers, attitudes and motivators study brief
5 update for a funder initiative meeting on
6 April 23, 2018. And I'd like to ask you to turn
7 to Page 8559.

8 A Yes.

9 Q Are the questions listed on Page 8559 the
10 questions that were asked in focus groups
11 pertaining to the citizenship question?

12 A Those are the focus group protocol
13 questions, so it's a discussion. So those would
14 have been the prompts used to move the discussion
15 on to the question of citizenship.

16 Q How are -- how are prompts for the focus
17 group discussion guide designed?

18 A A team of behavioral scientists
19 determines, first, what the objectives of the
20 focus group are. And so the objectives of the
21 CBAMS focus groups are to recruit participants
22 from known hard-to-count populations. So,

1 basically, the people in the room are not a
2 representative sample of the population, which
3 makes statistical inference not a good tool. But
4 what they are, are the people that are very
5 similar to the people we have difficulty getting
6 to answer the questionnaire in the first place.
7 So what you try -- in this case, what you're
8 trying to get from -- some people -- sometimes we
9 just want people who might not understand the
10 questions or who might not speak the target
11 language. In this case, we wanted to know from
12 people that we had scored as high on a low
13 response rate score, we wanted to know why they
14 wouldn't want to take the census. Or in this set
15 of questions, whether their hard-to-count
16 characteristic was going to be further enhanced by
17 their attitudes towards the citizenship question.

18 So these questions would have then been
19 designed to try to understand why specific groups
20 of known hard-to-count individuals didn't want to
21 fill out the census form. And that qualitative
22 information would then be processed, basically, by

1 counting up how many of these focus groups
2 particular mentions occur in.

3 So the transcript of focus group gets
4 coded by professional transcript coders, and it
5 gets reliability checked, and then those codes are
6 used to characterize the conversation in the focus
7 group on certain dimensions. In this case, it
8 would be barriers, attitudes, motivators,
9 dimension, and then you -- exactly -- you count up
10 in how many of the focus groups did this happen?
11 So for the 30 focus groups we were able to ask the
12 citizenship question, that would be the
13 denominator, and we would say something -- 16 --
14 in 16 of those 30 groups, this -- this attitude
15 was expressed. I don't like the citizenship
16 question. I won't take the census if it's on
17 there.

18 And then we would go back and look at
19 what was the recruiting characteristics for those
20 focus groups, and we would correlate that -- not
21 with a formal correlation coefficient but we would
22 say, in the ones where this was an issue, this was

1 the property. They were mostly Hispanics or they
2 were other -- renters, single -- young, single
3 people, that other -- those are the things that
4 are used to score you as hard-to-count.

5 Q And is that qualitative information
6 reflected or discussed in the interim report?

7 A Yes.

8 Q And are the quantitative results of the
9 survey discussed in the interim report?

10 A Yes.

11 Q With respect to the questions you
12 identified as -- as relevant to barriers and
13 related to the citizenship Questions 38, 39 and
14 40, does the interim report reflect increased
15 fears or concerns with respect to those questions?

16 A You can't say increased, because that
17 implies you have something to reference with, so
18 we would say high or low or relative to. In these
19 cases -- there's a battery of questions where
20 there's actually a correct answer and so we mark
21 how many of the answers that came that are
22 incorrect. So if you say -- if you say that you

1 don't -- so 38 asks us whether you're concerned
2 about whether we keep it confidential. But
3 there's a true or false question that asks whether
4 you think we're required, by law, to keep it
5 confidential. So we would take the score on that
6 true/false test, and that's a measure of
7 their -- a barrier, because they have incorrect
8 information. They might still behave the same way
9 if they had correct information, but we identify
10 the kinds of incorrect information people have and
11 then design a communication campaign to correct
12 it.

13 For an attitude, we would correlate that
14 with things that we can target, communicate and
15 attempt to convert them, basically, to change
16 their attitude.

17 And for motivators, we would say, well,
18 other people have said this is an important reason
19 to fill out the census. We would tell the general
20 population other people think it's important to
21 fill out the census because you'll get your fair
22 representation in the Congress. Other people

1 think it's important to fill out the census
2 because it's used to allocate \$675 billion a year,
3 so that's the way in which the quantitative
4 information would be converted into actionable
5 things.

6 Q With respect to 38, 39 and 40, in
7 particular, does the interim report recommend any
8 action items to deal with misperceptions of these
9 particular issues?

10 A So the interim report does indicate that
11 the communication campaign should address these
12 questions. It's interim, not just because we
13 haven't finished dotting the Is and crossing the
14 Ts. It's interim because we haven't fully
15 internally vetted the way the information was used
16 to draw conclusions about the advertising
17 campaign. So when it's issued in report form in
18 late November or December, then we'll put it
19 through the internal vetting process, and it will
20 be a publication of the 2020 census program and
21 you'll be able to see how we process the
22 information into the basic

1 instructions -- instructions is too strong of a
2 word -- into the basic planning of the first page
3 of the communication campaign.

4 That first phase, also, in addition to
5 media buys, it includes recruiting partner
6 organizations and identifying places where it
7 might be good to find additional partners or
8 different partners.

9 BY MR. ADAMS:

10 Q What views are -- what findings or
11 qualitative information is reflected in the
12 interim report that was prompted by the prompts
13 added on March 27 after the citizenship question
14 was decided?

15 A Since the interim report isn't final, I'm
16 going to characterize it in broad terms and not
17 quantitatively. We identified that some
18 subpopulations, including ethnic groups,
19 Hispanics, are very concerned about the
20 citizenship question and appear to be concerned
21 about it for reasons related to the same things in
22 the series. This came from the focus groups where

1 we were specifically asking about citizenship, but
2 its correlates show up in the survey where we
3 don't ask about citizenship but we can correlate
4 something like Hispanic ethnic origins with
5 answers here.

6 But we also found that other groups
7 weren't particularly concerned. For example, when
8 the focus group was primarily citizens, they
9 didn't -- they didn't express the same concern.
10 Even though those citizens would have been
11 selected with the same hard -- hard-to-count
12 indicator procedure. So they -- obviously, didn't
13 come from the same subpopulations but came from
14 persons within those subpopulations that had been
15 selected on the hard-to-count criteria.

16 Q Were focus group participants selected
17 based on their own citizenship status?

18 A That was not one of the criteria.

19 Q The focus groups indicated that Hispanics
20 were very concerned about the addition of a
21 citizenship question. Does Census have a way to
22 determine whether those concerns have increased

1 relative to before December -- before March of
2 2018?

3 A We're trying to measure levels at this
4 point. Measuring changes is beyond the pale.

5 Q The results from focus groups have been
6 fed to a decennial team, I believe you stated
7 earlier. I was wondering if you could clarify
8 what you meant by that.

9 A I know what I meant by it. That might
10 have been an imprecise technical term there.

11 So the operation of running a census is
12 highly interdependent, and it has a group of very
13 large contracts that are carrying out those
14 operations in collaboration with career civil
15 servants who work in various parts of the
16 Census Bureau, but primarily, in this case, in the
17 decennial directorate. So the results are
18 being -- I'm not supposed to use air quotes -- are
19 being supplied to -- it's called team Y&R, that is
20 the team integration contract, but they would also
21 be supplied to the field directorate because the
22 field directorate actually conducts the field

1 operation under a budget from the decennial. We
2 don't get a separate -- we have lots of
3 enumerators who haven't worked for us except for
4 the census, but their -- that whole process is run
5 through the field directorate.

6 Q How are the results from the CBAMS
7 currently being used? Are the results currently
8 being used to modify protocols, to design
9 messaging campaigns or other -- in other ways?

10 A The results are currently in the hands of
11 a small team from Young & Rubicon and the
12 Census Bureau, being coordinated within the
13 Census Bureau by Nancy Bates, and Gina Walejko on
14 the technical side. They were the core of the
15 team that did this successfully. By this, I mean
16 focused the advertising and focused the field
17 effort on quantitatively-identifiable low response
18 areas that -- Nancy, in particular, is something
19 of a pioneer in this area. So she is using her
20 expertise. Gina is using her expertise. The Y&R
21 team is using their expertise, which comes from a
22 different domain, and the field staff is using

1 their expertise to try to learn what we can from
2 these data, in addition to the other tools that
3 we've already produced, like the -- the low
4 response indicators in the planning database. So
5 all of those tools will get used.

6 Some of those tools have been actively
7 incorporated into the operational control systems
8 optimizer so that it can use them as a part of its
9 scheduling algorithm. The field supervisors and
10 the managers will get briefed, but the primary
11 use, right now, is to ramp up the communication
12 campaign.

13 Q And just to confirm, the final report
14 will be publicly available, you anticipate, in
15 November or December?

16 A I'm guessing it's still going to be
17 labelled an interim report, but it will be the
18 first public report from the CBAMS.

19 MR. ADAMS: Let's go off the record.

20 VIDEOGRAPHER: We're going off the
21 record. The time on the video is 4:53 p.m.

22 (Off the record.)

1 VIDEOGRAPHER: This begins Media Unit
2 Number 6. The time on the video is 5:11 p.m. We
3 are on the record.

4 EXAMINATION BY MS. GOLDSTEIN:

5 BY MS. GOLDSTEIN:

6 Q Good afternoon, Dr. Abowd. My name Elena
7 Goldstein. I am senior trial counsel for the
8 New York Attorney General's office. We are
9 another one of the plaintiffs in these many cases
10 challenging the citizenship question.

11 Now, I'm going to be asking you a series
12 of questions, and, in large part, to make this go
13 a little bit faster and in light of the
14 questioning you have sat through so helpfully
15 today, I'm going to be jumping around some of our
16 topics sort of abruptly, okay?

17 A Okay.

18 Q Okay. So I'm going to hand you what has
19 been marked as Plaintiffs' Exhibit 20.

20 (Plaintiffs' Exhibit 20, Question 28, was
21 marked.)

22 BY MS. GOLDSTEIN:

1 Q I'm handing you what has been marked as
2 Exhibit 20. It is a document Bates stamped 4863
3 to 4877. And I'm going to ask you to just turn to
4 Page 4874. And I'm going to direct your attention
5 to the very last paragraph for Question 28, in the
6 last portion of it, which is discussing why the
7 Census Bureau did not include a topic on the SOGI,
8 sexual orientation and gender identity, on the
9 planned topics on the 2020 census.

10 And this paragraph, I'll just read the
11 relevant language, notes "However, at the end of
12 the process, there was no demonstrated federal
13 data need for the addition of this content and,
14 subsequently, no changes to the planned census or"
15 -- "and ACS subjects."

16 What does it mean for there to be no
17 demonstrated federal data need?

18 A In assessing the reasonableness and
19 feasibility or changing or adding to one of our
20 questionnaires, we have an informal hierarchy. So
21 the Constitution says we have to count everybody,
22 so that one, basically, is off the table to

1 change.

2 Several statutes mandate that we collect
3 information, for example, about languages in
4 support of the Section 203 of the Voting Rights
5 Act. So absent the change to that legislation or
6 judicial determination that it was no longer
7 effective, the things that we do in support of
8 that would stay on the questionnaire. Now, we
9 might change the way we do them, but they would
10 stay there.

11 Q Sure.

12 A Many federal agencies identify -- they're
13 our next prime -- identify programmatic
14 requirements for data and statistical agencies
15 serve those programmatic requirements as a
16 principal client. That really is one of the
17 reasons why we exist. But those are nuances.
18 They have degrees.

19 So we would generally try to determine
20 what the specific requirement, in this case for
21 SOGI, was relative to a self-response declaration
22 of sex, which is the way we asked the question

1 from on the census, and some of our clients make
2 their independent case for it. Like, the National
3 Center For Health Statistics, when we conduct a
4 survey with them, if they ask for SOGI
5 information, we will get it, but it's a survey
6 we're conducting on a contractual relationship for
7 them.

8 So on the ACS -- which is, really, where
9 we were discussing this, not the census -- on the
10 ACS, it would have been: Are there sufficient
11 programmatic needs across, primarily, our federal
12 client, but we wouldn't rule out other clients,
13 but primarily our federal clients to justify
14 developing SOGI battery, and, also, is it a large
15 enough self-identifying proportion of the
16 population that we can get reliable measurements?
17 We think we can get reliable measurements of SOGI,
18 but we haven't identified a broad-based federal
19 agency requirement that can only be fulfilled by
20 modifying the ACS -- or it can be most effectively
21 fulfilled on both quality cost and usefulness by
22 modifying the ACS.

1 Q Is this one of the issues that might be
2 discussed at one of those technical meetings that
3 you were testifying about earlier today?

4 A It would certainly be discussed in
5 advisory groups like the census scientific
6 advisory group, and national advisory -- the
7 Census Scientific Advisory Committee and the
8 National Advisory Committee, and it's also
9 discussed in working groups organized by the
10 Office of the Chief Statistician of the
11 United States and OMB under working groups. So it
12 is an active area of discussion among the
13 statistical -- official statistical community in
14 Washington and the broader statistical community.

15 Q Can I ask you to turn the page, please?
16 And if you'll see in the very first paragraph on
17 4875, this document distinguishes between
18 mandatory content, required content and
19 programmatic content.

20 Are you familiar with that sort of
21 three-part organization or distinction?

22 A Yes. I sort of went and gave you the

1 proper definition of mandatory and --

2 Q I just want to make sure you're familiar
3 with this?

4 A Yeah. Okay.

5 Q And this is an accepted set of
6 distinctions for the Census Bureau, between
7 mandatory, required and programmatic data needs?

8 A It's a useful classification, and some
9 data needs move more fluidly between the
10 categories than others.

11 Q Where would you classify the citizenship
12 question?

13 A I would personal- -- so I'm not aware of
14 the Bureau having put it into these categories. I
15 believe the proper classification of it is
16 required.

17 Q How can it be required -- would it be
18 required pursuant to the Voting Rights Act?

19 A Yes. So what is required is information
20 sufficient to estimate the eligible voter
21 population in a proposed district. That's
22 required both to demonstrate you are in compliance

1 with the Voting Rights Act and to do the scrutiny
2 of that compliance.

3 Q So it has been required since 1965 when
4 the Voting Rights Act was passed?

5 A So this is why I say these are -- these
6 are fluid. It -- tabulations from the long form
7 were used when they started to be -- they weren't
8 available in the 1960s, because we didn't ask the
9 question in 1960 on the long form. So we did ask
10 it again on this long form in 1970s and
11 tabulations were produced of citizenship
12 population, I believe. I don't have specific
13 knowledge of how they were used in the '70s but I
14 believe used like the Citizen Voting Age
15 Population tabulations that we now produce.

16 Q And that the Census Bureau has been
17 producing for decades?

18 A When we collect data on citizenship, we
19 produce statistical products based on those data.

20 Q So you mentioned the advisory committees
21 just a moment ago. What is the role of the
22 advisory committees with respect to the decennial

1 census?

2 A So the Census Bureau is an agency that
3 benefits from three advisory committees, the CSAC,
4 the Census Scientific Advisory Committee, the
5 National Advisory Committee on Race, Ethnicity and
6 Other Populations, and the Federal Economic
7 Statistics Advisory Committee, so they're usually
8 called CSAC, NAC and FESAC.

9 I'm going to do FESAC really quickly.
10 It's chartered in the Department of Commerce but
11 it advises the Census Bureau, the BLS, the Bureau
12 of Labor Statistic, and the Bureau of Economic
13 Analysis, BEA, primarily about economic products,
14 but the census of population would be a subject
15 that would be presented to them on which we might
16 ask their advice and they do get updates on it as
17 well as other products.

18 But they focus on economic products, and
19 although they're chartered in Commerce, the BLS is a
20 full partner.

21 The other two, CSAC and NAC, are
22 chartered in the Department of Commerce for the

1 benefit of the Census Bureau, and they are
2 advisory committees under the Federal Advisory
3 Administrative Committee, FACA. So they operated
4 according to the FACA rules. The nomination
5 procedure has to be public. Because they're
6 chartered in Commerce, Commerce determines the
7 membership. The agenda has to be public. The
8 meetings have to be public. There has to be a
9 public comment period.

10 But, generally, they are for our benefit
11 in the sense that we actively seek to put on those
12 advisory committees people and representatives or
13 organizations who can be helpful in the scientific
14 committee on many different technical issues in
15 the National Advisory Committee on the full gamut
16 of issues, in particular, for the census --

17 Q Sure.

18 A -- not just the one in 2020, that has
19 been a source of advice and outreach to many of
20 the populations that we -- that it's important to
21 have partnerships with when you collect the data.

22 Q So is it fair to say that the

1 Census Bureau typically consults with CSAC and the
2 NAC about significant changes to the decennial
3 census?

4 MR. EHRLICH: Objection. Form.

5 THE WITNESS: It is correct to say that
6 we regularly consult with CSAC and the NAC about
7 the ongoing operations of all our major
8 statistical programs and some of our not-so-major
9 statistical programs.

10 BY MS. GOLDSTEIN:

11 Q And that includes the census?

12 A That includes the census.

13 Q Do you know the dates of the NAC
14 committee -- withdrawn.

15 Was the NAC consulted about the
16 citizenship question prior to the March 26th
17 decision by Secretary Ross?

18 A With your permission -- are you going to
19 ask me the same question about CSAC?

20 Q I will.

21 A I'm sorry?

22 Q I will.

1 A Can I do them at the same time? It will
2 be easier.

3 Q Please.

4 A So both NAC and CSAC meet twice a year on
5 an approximately September/March schedule. So
6 when they met for what they call the fall meeting
7 of 2017, there was nothing in the air. And when
8 they met for the spring meeting, in the case of
9 CSAC, the Secretary had just announced his
10 decision. And in the case of NAC, the Secretary's
11 decision had been out for, I believe, about a
12 month, but nothing in the administrative record
13 had been released yet. So for both of those
14 spring meetings, we had what I think we would all
15 characterize in the Census Bureau a very awkward
16 meeting.

17 Had the question been before us long
18 enough, we would certainly have consulted with
19 them. And because the entire decision-making
20 process was compressed into a few months, we did
21 not. And we did not have working groups in place
22 that we thought we could effectively use in

1 preparing the materials that the Secretary relied
2 upon for his decision.

3 Q So I just want to make sure I understand,
4 that if the Census Bureau had had adequate time,
5 you would have consulted the NAC regarding the
6 citizenship question proposal?

7 A Yes.

8 Q And if the Census Bureau had had adequate
9 time, you would have consulted the --

10 A CSAC.

11 Q -- CSAC about the citizenship question?

12 A Yes.

13 Q And if the Census Bureau had had adequate
14 time, you would have convened working groups at
15 these advisory committees to study the citizenship
16 question?

17 A We might have, yes. It would have been
18 actively discussed.

19 Q Now, recognizing that these committees
20 did not have an opportunity to weigh in prior to
21 the Secretary's decision, following that decision,
22 did these committees at your awkward meetings

1 express opinions with respect to the citizenship
2 question?

3 A Both committees expressed recommendations
4 that reflected the views of those committees about
5 the citizenship question, yes.

6 Q Can you please tell me NAC's
7 recommendations or views with respect to the
8 citizenship question?

9 A NAC's -- so I'm going to summarize them.
10 They're public. They're on the NAC site, so if
11 you want to read a recommendation into the record
12 and have me comment on it, I will.

13 I will characterize them this way. They
14 were extremely concerned that it was going to make
15 conducting the census in some of the populations
16 that are represented on the NAC much more
17 difficult, for a variety of reasons. And they
18 made recommendations, like, can you -- can you
19 determine what policies will be used to influence
20 whether immigration officials will be in the field
21 at the same time as census enumerators? Can you
22 describe how the communication campaign will be

1 modified in light of the citizenship question?

2 Q Sure.

3 A That captures the general tenor.

4 They also made specific recommendations
5 that we explicitly did not accept. I don't
6 remember all of them, but it's in the record that,
7 no, we can't do that. We were instructed by the
8 Secretary to conduct the census with the question
9 on it, and that is what's going to happen.

10 Q Is it fair to say that NAC told the
11 Census Bureau, we don't think you should have the
12 question?

13 A Well, I don't recall reading it in their
14 recommendations, but I think that's a fair
15 characterization, yes.

16 Q And did the CSAC take, substantially, the
17 same position?

18 A They might have been even more vocal.

19 Q With respect to their opposition to the
20 citizenship question?

21 A Yes.

22 Q So I am going to show you what is going

1 to be marked as Plaintiffs' Exhibit 21.

2 (Plaintiffs' Exhibit 21, 2020 census
3 integrated communication plan, was marked.)

4 MS. GOLDSTEIN: And this is a 208-page
5 document, and so I only printed a couple copies.
6 My apologies to the world and counsel.

7 BY MS. GOLDSTEIN:

8 Q This is document entitled 2020 census
9 integrated communication plan. As I mentioned,
10 209-page [sic] version. This is version 1.1 dated
11 6/2/2017.

12 Do you recognize this document?

13 A Yes.

14 Q What is this?

15 A This is one of the many plans that the
16 2020 census releases periodically to supply
17 transparent detailed information about the
18 planning and operations of the 2020 census.

19 Q And is another version of this document
20 planned?

21 A So I've been asking about these
22 throughout the day but I didn't ask about this

1 one. I now know that there will be another
2 version of the -- of the overall plan released in
3 early 2019. Most of these plans do get updated,
4 but -- to say whether there is a planned version,
5 I would have to ask, and I will.

6 Q And in connection with that, if you can
7 also find out whether and to what extent the
8 citizenship question will change the plans that
9 are in this document, or if you know now?

10 A So the reason we revised them is to
11 reflect information that has come to our knowledge
12 during the time it was written and during the time
13 the remaining things the plans are about have to
14 be acted on. So there's no point in having a
15 revised census plan in 2022. That's, basically,
16 just a history document. So if it's going to be
17 revised, it's likely going to be revised
18 relatively soon, and it will certainly reflect
19 what we learned in -- about the citizenship
20 question from the work that's been done to date.
21 We did not have a communication component in the
22 end-to-end test, so there won't be an opportunity

1 to revise the plan as a consequence of what we
2 learned there.

3 Q Why did you not have a communications --

4 A Component.

5 Q -- component in the end-to-end test?

6 A It was not sufficient --

7 (Thereupon, the court reporter
8 clarified.)

9 THE WITNESS: There was not sufficient
10 budget.

11 BY MS. GOLDSTEIN:

12 Q So if you can turn to Page 7 of this
13 plan, and if you go down to Bullet Point 1,
14 "Detail the research and database approach: A
15 successful campaign must be based on a solid
16 foundation of research and have strong internal
17 systems for collecting and analyzing data to
18 optimize performance."

19 Do you agree with this statement?

20 A Yes.

21 Q And given the timing of when the
22 citizenship question was added, is there a solid

1 foundation of research that informs the
2 communication plan -- the communication planning
3 process about the citizenship question and its
4 implications?

5 A No.

6 Q And are there stronger internal systems
7 for collecting and analyzing data to optimize
8 performance, given the recent addition of the
9 citizenship question?

10 A So we have tried to optimize performance
11 by using the instruments that we have available to
12 us, and there are additional planned task orders
13 for this communication, the integrated
14 communication contract, that will involve
15 additional collection of data, realtime tracking
16 data, both survey-based and other ways. So there
17 are definitely plans to collect data, and they
18 will be checked with -- with the census design as
19 it exists today in mind. So they will be fully
20 cognizant of the citizenship question.

21 Q Is it fair to say that the late addition
22 of the citizenship question will make it harder to

1 implement an effective communications plan?

2 MR. EHRLICH: Objection. Form.

3 THE WITNESS: No. I don't think it will
4 make it harder to implement an effective
5 communication plan. Whether that plan can be as
6 effective as we had hoped, is an open question.
7 We are going to have to figure out how to conduct
8 the census in the current macro climate. And
9 that's not just the citizenship question. That is
10 the current climate. And that's not different
11 from what we had to figure out in 2010 and 2000.

12 2000 was the first time we did a
13 communication campaign, and we learned an enormous
14 amount. I think the most important thing we've
15 learned from a communication campaign is that the
16 vast majority of the residents of the
17 United States only know about the Census Bureau
18 because of the conducting of the decennial census.
19 And while we're immersed in it every day and many
20 of you are professionals, you're probably immersed
21 in it, too, the typical citizen, the
22 representative respondent on one of our surveys

1 doesn't know about the existence of statistical
2 agencies until that survey shows up in his or her
3 mailbox usually.

4 So the one with 100 percent saturation is
5 the census. The next closest thing is
6 American Community Survey, but its saturation is
7 only a few percentage points a year, accumulates
8 to a fair percent of the population. So this is
9 our opportunity to teach the people who live in
10 the United States why we have a statistical
11 agency. Why we have statistical agencies and what
12 they're good for.

13 BY MS. GOLDSTEIN:

14 Q But is it fair -- I think you
15 testified -- let me ask it as a new question.

16 A Okay.

17 Q The addition of the citizenship question
18 will impact how the Census Bureau does its
19 communications, correct?

20 A Yes.

21 Q And the short time frame in which the
22 Census Bureau has to adjust its plan will make

1 that process a little bit more difficult --

2 A Yes.

3 Q -- fair to say?

4 A Yes.

5 Q Okay. So let's go to Page 37, and if you
6 go one, two, three, four, bullet points down,
7 "With young children having a highest net census
8 undercount rate than any other age group, Hispanic
9 children account for more than 36 percent of the
10 total net undercount for all children younger than
11 five."

12 Did I read that correctly?

13 A Yes.

14 Q So there is a -- prior to any addition of
15 the citizenship question, the Census Bureau has
16 recognized that there is a net undercount for
17 Hispanic children, correct?

18 A Yes.

19 Q Is it fair to say that the NRFU -- NRFU
20 efforts that the Census Bureau puts in place are
21 less effective with respect to this population?

22 MR. EHRLICH: Objection. Form.

1 THE WITNESS: So these are estimates
2 based on the 2010 census coverage measurement
3 program.

4 BY MS. GOLDSTEIN:

5 Q Sure.

6 A So they were in an environment -- a
7 different political environment and a
8 questionnaire without a citizenship question on
9 it. And this identification of children, age zero
10 to four, this is the first time that that had
11 popped out as such a large net undercount.

12 There's a couple of possible reasons for
13 that. Our demographic data -- so one of the
14 things we would measure against better now are for
15 that age group because of accuracy of birth
16 records. So we have, consistently, throughout
17 this decade, focused on ways in which we can
18 improve our undercount. The -- the end-to-end
19 test does have a coverage evaluation component,
20 but it wasn't structured to provide statistical
21 information. So we have only the direct analysis
22 of the test to see if we have improved it.

1 I don't want to say it's a crap shoot. I
2 think that there is solid evidence that design
3 changes that have been made, particularly queues
4 and reminders, and these are actually easier to do
5 on the Internet self-response instrument than on a
6 paper instrument, because you can blow by the
7 reminders and the queues on the paper one, but
8 it's harder to blow by the ones on the Internet
9 instrument, too, but it's harder to because of the
10 way it's structured. So we put some considerable
11 effort --

12 BY MS. GOLDSTEIN:

13 Q Sure.

14 A -- into trying to alert people who have
15 answered someplace else on the form, correlates to
16 there might be a young -- an uncounted person here
17 on this, but we don't have the statistical
18 evidence to back up a claim that that will reduce
19 the net undercount. We have the statistical
20 correlates to suggest it might.

21 Q Is it possible that the presence of the
22 citizenship question on the decennial census will

1 exacerbate this kind of net undercount of Hispanic
2 children?

3 A Yes. That is what we mean when we say
4 the quality of the census count will be harmed.

5 Q Let's go to Page 53. And I just want
6 to -- you got -- direct you to the very last
7 paragraph in bold. Leading up to the 2020 count,
8 all communication elements, including advertising,
9 earned media, collateral and other items designed
10 for public dissemination will be pretested and
11 refined.

12 Has that process happened yet?

13 A I'm sure that some parts of that process
14 have happened already. But a systemic part of it
15 would have been part of the 2018 end-to-end test
16 and so -- yeah, at the point at which this plan
17 was written, I believe -- I get my budget years
18 and my calendar years -- I believe -- we were
19 still in fiscal 2017. The full design for the
20 end-to-end test was still on the table. That was
21 the three site and it included a media campaign.
22 So those comment components were not done.

1 The other components that are part of the
2 integrated communication contract and the ongoing
3 activities of the decennial census were done.

4 Q Earlier you testified that the political
5 environment can affect response rates, correct?

6 A I know I just said political. I've been
7 trying very hard to say macroenvironment. If
8 you'll give me leave to say macroenvironment,
9 that's what I meant.

10 Q And one of the things that goes into
11 macroenvironment is the political context, fair to
12 say?

13 A That's fair to say. But another thing
14 that goes into it is the state of the economy.

15 Q Absolutely.

16 So let's say -- so would you -- you've
17 also testified that the macroenvironment can
18 affect the efficacy of NRFU, correct?

19 A Correct.

20 Q Is there -- is it possible that the
21 presence of a citizenship question will exacerbate
22 those effects?

1 A It's certainly possible, yes.

2 Q Does the Census Bureau believe that that
3 is likely?

4 A So what we believe is likely is that
5 we're going to need more intensive nonresponse
6 follow-up than the baseline lifecycle cost
7 estimate. One of our big concerns -- macro
8 concerns is when you ramp up the NRFU, you have to
9 hire the planned number of enumerators so that
10 they're available to deploy. If you discover one
11 week into NRFU that you're short of enumerators,
12 the six- to seven-week onboarding process defeats
13 you.

14 So let me just say there are many
15 professionals at the Census Bureau painfully aware
16 of the consequences of not being able to onboard
17 enough enumerators. As I understand it, we had to
18 ask for a budget supplement in 1990 because of
19 difficulties onboarding.

20 We had the best possible macroenvironment
21 for conducting a census in this regard in 2010,
22 for all the wrong reasons, but, nevertheless, it

1 was extraordinarily easy to onboard very good,
2 quality enumerators.

3 So in terms of macroenvironment,
4 we're -- the red lights are flashing around can
5 you hire enough enumerators? And the cost
6 estimate is designed -- assuming that we can, if
7 we can, then where the extra cost from the
8 nonresponse follow-up might be caused by the
9 citizenship question will come from having to
10 deploy them more intensively than we had planned.

11 Q And it's fair to say that there are
12 aspects of the macroenvironment currently that are
13 making it difficult to hire as many enumerators as
14 the Census Bureau needs?

15 A So I don't have to hypothesis, we had
16 difficulty hiring enumerators in Rhode Island for
17 the test.

18 Q And you expect that problem to be the
19 case for the -- as you attempt to onboard more
20 enumerators, correct?

21 A I would say we used that experience
22 to -- as an opportunity to revisit some components

1 of that recruitment plan.

2 Q But it's fair to say that the low levels
3 of unemployment right now will make it more
4 difficult to hire enumerators?

5 MR. EHRLICH: Objection. Form.

6 THE WITNESS: It's fair to say it will
7 make it more expensive to hire enumerators. And
8 if that's not acknowledged, then it will make it
9 more difficult to hire enumerators.

10 BY MS. GOLDSTEIN:

11 Q So, previously, you testified about the
12 work that Young & Rubicon was retained to do,
13 correct?

14 A So I testified about the work of the
15 integrated communication contract for which Y&R is
16 the lead contractor.

17 Q Have they done attitudinal studies on the
18 citizenship question as part of that contract?

19 A I do not know whether they have done
20 them. I do know that they are being actively
21 discussed.

22 Q And has Reingold performed attitudinal

1 studies on the citizenship question?

2 A So, as I said earlier, I would learn what
3 Reingold -- so Reingold is a partner in the
4 integrated communication contract, one of the
5 subcontractors. Reingold has been involved in the
6 task orders associated with the integrated
7 communication contract to date. Reingold did
8 participate in the CBAMS task order. I asked
9 whether the task orders were public, and the task
10 orders are not public. So they either have to be
11 FOIA'd or if they're discovered, they have to be
12 redacted to remove confidential information from
13 them. I think that that's what I promised to get
14 in terms of an answer about Reingold.

15 Q But do you know if they have performed
16 attitudinal studies as part of this?

17 A So I do not know whether Reingold was the
18 specific subcontractor or on the subcontractor
19 team to do them. That would be in the task
20 order -- the task order would say this has to be
21 done, and then Y&R would assemble the team that
22 did it. So I might not necessarily know, but the

1 financial officer paying the bills would know
2 whether contractors --

3 The Census Bureau's answer to that
4 question is they have actively participated in the
5 task orders to date and -- and that included the
6 CBAMS, which did have attitudinal -- I think
7 you're not talking about those attitude studies.

8 Q There are other attitudinal studies
9 pursuant to that contract, correct?

10 A There is discussion of other attitudinal
11 work broadly interpreted, but we're not done
12 collecting data - --

13 Q Right.

14 A -- about things that might make it easier
15 or more difficult to conduct the census.

16 Q So are -- there are no results yet to be
17 analyzed from those studies?

18 A As far as I know, yes. The agency's
19 answer is there are no --

20 (Thereupon, the court reporter
21 clarified.)

22 THE WITNESS: There are not yet any data

1 from those studies.

2 MS. GOLDSTEIN: Can I have this marked,
3 please?

4 (Plaintiffs' Exhibit 22, OMB standards
5 and guidelines for statistical surveys, was
6 marked.)

7 BY MS. GOLDSTEIN:

8 Q Actually, before I get to this, you had
9 testified at your previous deposition regarding
10 Census's statutory charge to seek alternative
11 sources for information before asking a question
12 of the population.

13 Where does that statutory charge come
14 from?

15 A Yeah. In Title 13 -- I'm sorry, I can't
16 identify the clause -- we are instructed to use
17 administrative records and other sources of data
18 before attempting to gather the data by direct
19 instrument. That's a paraphrase, but that is
20 certainly the way we interpret that clause in the
21 Title 13.

22 Q And that is a well-established

1 Census Bureau practice, correct?

2 A Correct.

3 Q I'm handing you what has been marked as
4 Plaintiffs' Exhibit 22. It is a copy of the
5 standards and guidelines for statistical surveys,
6 September 2006, from the Office of Management and
7 Budget.

8 Do you recognize this document?

9 A I think your handed me SPD2.

10 Q I think that's the shorter way to say it,
11 yes.

12 A Okay.

13 Yes. I do.

14 Q The Census Bureau is obligated to comply
15 with the standards set forth in this document,
16 correct?

17 A Yes. That's right.

18 Q I'm going to ask you to turn to Page 11
19 of this document, Standard 2.3. "Agencies must
20 design and administer their data collection
21 instruments and methods in a manner that achieves
22 the best balance benefit maximizing data quality

401;
403

1 and controlling measurement error" --

2 A I'm sorry. I started reading -- 2.3.

3 Q I'm sorry?

4 A I was down in the guidelines. Go ahead.

5 Yes, I've got it. Go ahead.

6 Q -- "controlling measurement error while
7 minimizing respondent burden and cost."

8 Now, at prior depositions, we have looked
9 at the many Census Bureau memoranda that your team
10 of experts put forth, and the Census Bureau has
11 concluded that Alternative D resulted in lower
12 quality data than Alternative C, correct?

13 A Yes.

14 Q And Alternative D has a higher respondent
15 burden than Alternative C, correct?

16 A Yes.

17 Q And Alternative D has a higher cost than
18 Alternative C, correct?

19 A Yes.

20 Q And I believe you've testified previously
21 that no decision has yet been made on whether or
22 not the Census Bureau will use the self-response

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1 data gathered pursuant to a citizenship question;
2 is that correct?

3 A I believe I said that no decision has
4 been made on how the Census Bureau will process
5 the respondent data into the final record of the
6 2020 census and use the respondent data and the
7 administrative data in producing a CVAP table.

8 Q And one possibility that you raised at
9 your deposition was to implement
10 Alternative D -- "One way to" -- I'm reading from
11 your deposition, "One way to implement
12 Alternative D is to conduct Alternative B, ignore
13 it and do Alternative C."

14 Correct?

15 A That is one way to implement
16 Alternative D, yes.

17 Q So one possibility that the team of
18 experts is considering is to conduct
19 Alternative B, ignore it and do Alternative C; is
20 that correct?

21 A It's more nuance than that. One
22 possibility they're considering is how to do a

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1 response quality evaluation that allows a
2 combination of the respondent data and the
3 administrative data that uses both in a
4 statistically defensible way. A statistical
5 defensible way means you can explain the reason
6 why the combination was done the way it was done
7 and demonstrate that it has better properties on
8 this quality risk usefulness profile.

9 Q And the Census Bureau has not yet
10 determined whether or not there is a
11 scientifically feasible way to do that?

12 (Conference call interruption.)

13 BY MS. GOLDSTEIN:

14 Q Or statistical feasible way to --
15 She's like an old friend.

16 A We have a number of candidate evaluations
17 that we're clearly going to have to do very
18 rapidly and come to a conclusion. Large
19 collections of mathematical statistics and survey
20 methodologists can have difficulty coming to a
21 conclusion in a hurry. That's why the acting
22 director gave us a deadline.

1 Q Lawyers have the same problem.

2 But it is still the case that today, no
3 conclusion has been reached, correct?

4 A That's correct. Yes.

5 Q If the Census Bureau does not make
6 use -- if the Census Bureau concludes that the
7 self-response data from the citizenship question
8 should be disregarded with respect to the ultimate
9 processing of the response data, would that use
10 minimize response -- respondent burden --

11 A No.

12 MR. EHRLICH: Objection. Form.

13 THE WITNESS: No.

14 BY MS. GOLDSTEIN:

15 Q Alternative D has a higher respondent
16 burden than Alternative C, correct?

17 A Yes.

18 MS. GOLDSTEIN: May I have one more
19 exhibit, please?

20 (Plaintiffs' Exhibit 23, Secretary Ross
21 decision memo, was marked.)

22 BY MR. HO:

1 Q I'm going to show you what has been
2 marked as Plaintiffs' Exhibit 23. This is the
3 decision memo from Secretary Ross dated
4 March 26, 2018 that begins at Bates stamp 1313,
5 and I'd like you to just turn to Page 1317.

6 So I'd like to direct you to the last
7 half of the top paragraph on this page. The
8 sentence that begins "Finally."

9 A Yes.

10 Q "Finally placing the question on the
11 decennial census and directing the Census Bureau
12 to determine the best means to compare the
13 decennial census responses with administrative
14 records will permit the Census Bureau to determine
15 the inaccurate response rate for citizens and
16 noncitizens alike using the entire population."

17 Has that statement been evaluated by the
18 Census Bureau?

19 A As a statement of fact, that statement is
20 correct.

21 Q Okay. "This will enable the
22 Census Bureau to establish, to the best of its

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1 ability, the accurate ratio of
2 citizen-to-noncitizen responses to impute for that
3 small percentage of cases where it is necessary to
4 do so."

5 How does adding a question -- a
6 citizenship question to the census and determining
7 the incorrect response rate for citizens and
8 noncitizens who respond help the Census Bureau
9 impute with respect to folks who do not respond at
10 all and who do not have administrative records?

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11 A The Census Bureau did not write that
12 sentence, so I suggest you ask the Secretary what
13 he meant by it.

14 Q Well, let me back -- let me ask the
15 question a slightly different way.

16 Do you agree that this will enable the
17 Census Bureau to establish, to the best of its
18 ability, the accurate ratio of citizen to
19 noncitizen responses to impute for that small
20 percentage of cases where it is necessary to do
21 so?

22 A The Census Bureau does not yet have a

1 position on what percentage of cases it will be
2 necessary to do so.

3 So the first part of the sentence, this
4 will allow the Census Bureau to establish, to the
5 best of its ability, accurate ratios of
6 citizen-to-noncitizen responses, I don't think is
7 controversial.

8 Q What about the second half of that
9 sentence, that that -- I'm trying -- that ratio
10 will aid the Census Bureau with its imputation for
11 that category of folks who will be leftover?

12 A Second half of that sentence makes
13 technical presumptions that the Census Bureau does
14 not currently endorse.

15 Q Can you list those presumptions for me?

16 A Well, I'm not sure, because it's a very
17 short sentence, and I would have to ask the
18 Secretary what he meant by small, and why he
19 thought that that particular ratio was what was
20 going to be used to do the imputation.

21 I don't think there's anything in what
22 the Census Bureau communicated, and technical

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1 responses to the Secretary, that indicated that
2 that is the methodology that we would use to
3 produce the CVAP table. We were, in fact, very
4 careful to say that we hadn't yet finalized a
5 methodology to do that, especially in the presence
6 of multiple responses for the same -- what we'd
7 call indicator.

8 Q So is it fair to say that at the very
9 least, it is premature to say that this ratio will
10 help the Census Bureau establish, to the best of
11 its ability, an accurate ratio that will help you
12 to impute for that small percentage -- for that
13 whatever it is percentage of cases where it is
14 necessary to do?

15 A Speaking on a purely statistical basis,
16 having population data of self-responses and
17 population data of administrative responses does
18 contribute to more accurate statistical analysis.

19 As to how they would be used to impute
20 the problematic cases in either direction, that is
21 not yet determined.

22 Q And this is complicated by the

1 significant inaccuracy issues that were
2 noticed -- that were noted in your technical
3 memos, correct?

4 MR. EHRLICH: Objection. Form.

5 THE WITNESS: This is complicated by the
6 need to resolve, with defensible evidence,
7 conclusions that you draw from those
8 inconsistencies, especially for the administrative
9 record noncitizens.

10 BY MS. GOLDSTEIN:

11 Q So the Census Bureau has not yet
12 completed its analysis that would support or not
13 support Secretary Ross's conclusion in that
14 sentence; is that fair to say?

15 A Yes.

16 MS. GOLDSTEIN: Let's take a short break
17 and see where we're at. Off the record.

18 VIDEOGRAPHER: Going off the record. The
19 time on the video is 5:59 p.m.

20 (Off the record.)

21 VIDEOGRAPHER: This begins Media Unit
22 Number 7. The time on the video is 6:09 p.m. We

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1 are on the record.

2 BY MS. GOLDSTEIN:

3 Q Dr. Abowd, I think I have just one more
4 question.

5 If you will turn to the last page of the
6 exhibit in front of you Bates marked 1320.

7 A Okay.

8 Q In light of the Census Bureau's analysis
9 of Alternative C versus Alternative D, do you
10 agree that reinstatement of a citizenship
11 question on the 2020 decennial census is necessary
12 to provide complete and accurate data in response
13 to the DOJ request?

14 A No.

15 Q And that is the position of the
16 Census Bureau, correct?

17 A Yes.

18 MS. GOLDSTEIN:

19 Q Thank you, Dr. Abowd.

20 I just want the record to reflect and
21 that plaintiffs -- and I speak to all plaintiffs
22 with respect to this -- are leaving the record

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1 open, because, among other reasons, the documents
2 that were produced last evening that we have not
3 had time to review that are relevant to this
4 deposition, both with respect to the underlying
5 documents, as well as to how the documents relate
6 to many of the topics listed in the 30(b)(6)
7 deposition notice, as well as documents that were
8 identified this afternoon that have not yet, to
9 our knowledge, been produced. These include the
10 Reingold documents, documents relating to the Y&R
11 contract, the CBAMS microdata file that was given
12 to Y&R, and the July extended white paper and
13 possible other documents that we will confer with
14 counsel on.

15 MR. EHRLICH: I think Dr. Abowd said the
16 July white paper was the same as the August white
17 paper we sent you.

18 MS. GOLDSTEIN: There were some small
19 modifications. So to the extent there is another
20 version of that white paper that should be
21 produced to us, okay?

22 MR. EHRLICH: We can talk about that.

1 MS. GOLDSTEIN: Absolutely. Can we close
2 the record or does counsel have questions --

3 MR. EHRLICH: I just --

4 MS. GOLDSTEIN: Not close the record.
5 Leave the record open but end this deposition for
6 today?

7 MR. EHRLICH: I just have a couple
8 questions on open items that we wanted to close
9 the loop on.

10 EXAMINATION BY MR. EHRLICH:

11 Q In terms of the 2010 census, who
12 authorized the use of contingency funds?

13 A For the 2010 census, contingency funds
14 had to be requested by the director from OMB. So
15 OMB had to approve the release.

16 Q And for the 2020 census, is there a place
17 you could find an amount of the contingency funds
18 that are currently planned?

19 A Yes. The lifecycle cost estimate is a
20 public document. It's on census.gov. I can
21 supply find the URL or the search keywords that
22 will find it, whichever you prefer.

1 Q And is there a place -- a place where you
2 could find the expected enumeration from the
3 administrative records?

4 A That's a component of the lifecycle cost
5 estimates.

6 Q And why was it that the RCTs that we've
7 discussed previously were not put into the field?

8 A Acting Deputy Director Lamas,
9 Acting Director Jarmin, and Under Secretary Kelley
10 conferenced about that proposal and determined
11 that the 42 million households that had already
12 asked -- had already answered the existing
13 citizenship question constituted adequate testing
14 and that we would use that question.

15 MR. EHRLICH: I have nothing else.

16 FURTHER EXAMINATION BY MS. GOLDSTEIN:

17 Q One follow-up question on that,
18 Dr. Abowd. Sorry.

19 Was the Census Bureau team of experts
20 consulted on Director Jarmin, Under Secretary
21 Kelley and Dr. Lamas's decision not to put those
22 RCTs into the field?

1 A Tori Velkoff, although she's not an
2 author of the paper that you got, was a member of
3 the SWAT team. She had staff supported.

4 So in these situations, the senior
5 leadership of the Census Bureau consults with the
6 internal experts they believe are most salient. I
7 mean, Tori preferred the cost estimate, so that
8 was -- that's who got consulted.

9 Q So Ms. Velkoff got consulted?

10 A Yes.

11 Q Thank you.

12 And were you -- were you consulted?

13 A No.

14 Q Thank you.

15 VIDEOGRAPHER: This concludes today's
16 video deposition. The time on the video is
17 6:14 p.m. We are off the record.

18 (Whereupon, at 6:14 p.m., the deposition
19 of Dr. John Abowd was concluded.)
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* * * * *

CERTIFICATE OF REPORTER

I, KAREN LYNN JORGENSEN, RPR, CSR, CCR the officer before whom the foregoing deposition was taken, do hereby certify that the witness whose testimony appears in the foregoing deposition was duly sworn by me; that the testimony of said witness was taken by me in stenotype and thereafter reduced to typewriting under my direction; that the said deposition is a true record of the testimony given by said witness; that I am neither counsel for, related to, nor employed by any of the parties to the action in which this deposition was taken; and further, that I am not a relative or employee of any counsel or attorney employed by the parties hereto, nor financially or otherwise interested in the outcome of this action.



KAREN LYNN JORGENSEN, RPR, CCR, CSR

Dated this 1st day
of September , 2018.

ACKNOWLEDGEMENT OF DEPONENT

I, DR. JOHN ABOWD, do hereby acknowledge I have read and examined the foregoing pages of testimony, and the same is a true, correct and complete transcription of the testimony given by me, and any changes or corrections, if any, appear in the attached errata sheet signed by me.

Date

DR. JOHN ABOWD

Stephen Ehrlich, Esquire

U.S. DEPARTMENT OF JUSTICE

20 Massachusetts Avenue

Washington, D.C. 20530

IN RE: New York Immigration Coalition, et al., v.
United States Department of Commerce, et al.

1 Dear Mr. Ehrlich:

2 Enclosed please find your copy of the
3 deposition of DR. JOHN ABOWD, along with the
4 original signature page. As agreed, you will be
5 responsible for contacting the witness regarding
6 signature.

7 Within 21 days of receipt of transcript,
8 please forward errata sheet and original signed
9 signature page to counsel for, John Freedman and
10 all counsel of record.

11 If you have any questions, please do not
12 hesitate to call. Thank you.

13 Yours,



14 Karen Lynn Jorgenson, RPR, CCR, CSR
Capital Reporting Company
15 1821 Jefferson Place, Northwest
3rd Floor
16 Washington, D.C. 20006
(202) 857-3376

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cc: All counsel of record
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E R R A T A S H E E T

Case Name: New York Immigration Coalition, et
al., v. United States Department of Commerce, et
al.,

Witness Name: DR. JOHN ABOWD

Deposition Date: Wednesday, August 29, 2018

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Signature

Date

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Federal Rules of Civil Procedure

Rule 30

(e) Review By the Witness; Changes.

(1) Review; Statement of Changes. On request by the deponent or a party before the deposition is completed, the deponent must be allowed 30 days after being notified by the officer that the transcript or recording is available in which:

(A) to review the transcript or recording; and

(B) if there are changes in form or substance, to sign a statement listing the changes and the reasons for making them.

(2) Changes Indicated in the Officer's Certificate. The officer must note in the certificate prescribed by Rule 30(f)(1) whether a review was requested and, if so, must attach any changes the deponent makes during the 30-day period.

DISCLAIMER: THE FOREGOING FEDERAL PROCEDURE RULES ARE PROVIDED FOR INFORMATIONAL PURPOSES ONLY.

THE ABOVE RULES ARE CURRENT AS OF SEPTEMBER 1, 2016. PLEASE REFER TO THE APPLICABLE FEDERAL RULES OF CIVIL PROCEDURE FOR UP-TO-DATE INFORMATION.

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COMPANY CERTIFICATE AND DISCLOSURE STATEMENT

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